

FUNDING THE BORDER

Funds and Strategies
to Stop Migration



TABLE OF CONTENTS

Introduction	5
1. How is Externalisation Funded? The Budget for Migration Control in the New 2021-2027 Multiannual Financial Framework by GIORGIA JANA PINTUS, <i>Externalization Policies Watch project</i>	9
2. The Central Mediterranean Spells the Shipwreck of International Law by SARA PRESTIANNI, <i>Asylum and Migration Programme Officer EuroMed Rights</i>	19
3. The Impact of the EU Migration Policy in Mali by CLOTILDE WARIN, <i>Researcher</i>	25
4. As If Nothing Had Happened: Sudan's Transition and the EU Migration Policy by JÉRÔME TUBIANA, <i>Researcher</i> and CLOTILDE WARIN, <i>Researcher</i>	29
Table MFF 2021-2027 Migration Funding	33

PLEASE LETS
US TO GO



XXF ARE

INTRODUCTION

In recent years, the policies of externalisation of migration controls have been at the heart of the EU's programming within the framework of migration and asylum policies. To push the European border further south, the EU and the European states have begun to equip themselves with new political, legislative, and financial instruments, often to the detriment of International Law on the right to asylum and human rights, as well as of the principles guiding the EU's external action and financial management. As we mentioned in the last monitoring report,¹ the political priorities defined at the Valletta summit in 2015 were supported by the creation of ad hoc funds allocated to ensure the blocking of people in countries of origin and transit, both with EU resources and national budgets. It was the first time that the EU set up a specific fund to finance its migration control action in strategic transit countries and regions. Several programmes financed through the Africa Fund, first of all the support programme for the so-called Libyan coastguard implemented by the Italian Ministry of Interior, have, de facto, supported the externalization of European borders, causing atrocious violations of the human rights of migrants, while at the same time uncovering the almost complete lack of transparency and control over the resources employed.²

In the coming months, the final stage of negotiations on the next EU multiannual financial framework (MFF) should be reached, which will set the budget for the EU policies for the next few years. The debate on the 2021-2027 MFF must necessarily be interpreted in light of the priorities of EU migration policy, as defined in the New Pact on Migration and Asylum presented by the Commission on 23 September 2020. During the presentation of the Pact, the representatives of the Commission already stated that more investments are needed in the external dimension of migration in the next MFF. The Pact, funded by the next budget, promotes a comprehensive approach to migration control and containment, which starts in the countries of origin and reaches the EU's external borders.

Although at the time of writing the negotiations on the Pact proposal are still underway, it is nevertheless necessary to highlight the rationale behind this first attempt at a compromise, which suggests a widely shared political orientation among the member states. In fact, the Commission's mediation between sovereigntist and border countries resulted in the confirmation of a previously adopted approach that goes back at least to the Valletta summit: **“keeping people in their countries.”**

As pointed out by several observers, despite a few positive notes, **the pact largely focuses on the same old policy: preventing the arrival of migrants in Europe, contrasting the so-called secondary movements, and repatriations.** The “new” system designed

¹ - <https://www.arci.it/app/uploads/2019/05/report-2019-inglese-normal.pdf>

² - ARCI, together with ASGI and GLAN filed proceedings with the European Court of Auditors regarding the diversion of development funds to finance externalisation in Libya; see:

<https://www.arci.it/esposto-sulla-complicita-finanziaria-dellue-nei-respingimenti-verso-la-libia/>

by the Regulation on Asylum and Migration management³ relies on a distorted notion of solidarity among member states. Under normal circumstances, or in situations of “migratory pressure” for border states, member states can in fact share “the burden” with the struggling state in a variety of ways: by relocating asylum seekers and holders of protection (with priority for minors), but also by repatriating those who, after rapid screening at the border, are deprived of the chance to enter the European territory, or by contributing to the blocking of migrants at the EU external borders or in third countries of transit. This system tramples on the aspirations and rights of immigrant men and women who will presumably be victims of detention, have difficulty accessing the asylum procedures and, if classified as economic migrants, be repatriated without even the possibility of passing the border and entering the European territory; moreover, this system does not benefit the host communities and countries either: **behind the proposals to reform the Common European Asylum System, there hides the ghost of the Dublin Regulation and of the implementation of the principle establishing responsibility for the country of first access.** In fact, the solidarity mechanism briefly described and the pre-entry screening system would maintain the role of Italy and other border countries as “gatekeepers” of the EU. Indeed, **the 2019 Malta agreement, revised by the Commission proposal, together with the strengthening of the hotspot system, risks definitively suppressing any attempt at a radical and necessary reform of the Dublin Regulation and at a change in paradigm. And while borders are being strengthened, the Mediterranean keeps being emptied.** The walls of the Fortress will be protected by the European Border and Coast Guard Agency (EBCG, formerly Frontex) which, from January 2021, will begin deploying its new corps of 10,000 staff at the borders of the EU and non-EU countries. The evolution of the role of Frontex is indicative of an approach that is increasingly oriented towards repatriations, protecting borders and preventing arrivals by sea. The figures and commitment, in terms of facilities and resources, show better than any document that the EU has put in place an actual war strategy against migration, establishing its own “army”. The same fate awaits EUNAVFOR-MED operations which, from Operation Sophia in 2015 to the new Irini operation, have witnessed the total disengagement of EU actors in search and rescue activities. The strategic retreat of European and national actors in SAR operations is confirmed by the Pact. A dramatic confirmation that is by no means compensated by the proposal of guidelines for member states with which the Commission suggests not to criminalise the SAR humanitarian activities of NGOs.⁴ Indeed, collaboration with Libyan and Tunisian coastal authorities are just two examples of the determination of the EU and its member states to delegate their responsibilities for sea rescue, leading to push-backs -which are prohibited by European and national legislation, as well as by international conventions- and to the death of tens of thousands of people on the Mediterranean routes.

Thus, external action will be the renewed objective of the EU, together with the strengthening of the borders and the repatriation plan, through overarching cooperation with the countries of origin and transit entirely oriented towards the externalisation of borders. Conversely, measures for legal access pathways, evacuation mechanisms and resettlement interventions

³ - <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020PC0610&from=EN>

⁴ - The guidelines refer to the so-called facilitators directive, see:

<https://www.statewatch.org/media/1365/eu-com-pact-guidance-facilitators-directive-23-9-20.pdf> See also the proposal for the Recommendation on cooperation among member states concerning operations carried out by vessels owned or operated by private entities: <https://eur-lex.europa.eu/legal-content/IT/TXT/PDF/?uri=CELEX:32020H1365&from=IT>

to avoid the exploitation and death of migrants, as well as a debate on voluntary repatriation, remain marginal.⁵ **The “new” approach to cooperation with third countries can hardly be defined as a “win-win strategy”, as it was instead described.** The primary objectives of cooperation with non-EU countries remain, in fact, the fight against the “root causes of irregular migration” and the implementation of the return policy, which the EU tries to facilitate by leveraging openings or restrictions in the visa regime. The starting point to facilitate the return and externalisation policy, as emphasized during the presentation of the Pact, would be the Visa Regulation amended in February 2020;⁶ the Regulation imposes a system of conditionality of visa issuance depending on partner country cooperation on readmission and return and control of migration flows.

Yet, the use of conditionality to gain a contractual advantage with strategic partners, which are often obviously reluctant to submit to the asymmetrical relationship imposed by Europe, is not limited only to the Visa regime. As we will see in the following pages, conditionality is a key element also in the discussion on the financial programmes for external action of the next MFF, and in particular on the NDICI (Financial Instrument for Neighbourhood, Development, and International Cooperation). The concerns are manifold. Firstly, there is a risk that in order to “tackle the root causes of irregular migration” the complex relationship between migration, development and security will continue to be exploited, as was clearly the case in various programmes financed by the Trust Fund for Africa. Secondly, the question is what the effectiveness and sustainability are of a system of cooperation oriented towards security objectives and distorted by internal political considerations. But above all, the use of informal “levers” and simplified agreements with unstable countries or countries subject to dictatorial regimes has actually led to supporting authoritarian governments, violations, and repressive actions on the migrant and local population, contributing, in general, to the instability of the regions of origin and transit. The experience in the Sahel, as well as in North Africa and Turkey, which the EU continues to define as “virtuous” examples, should be sufficient testimony.

In the first part of this document, we will try to analyse the expenditure earmarked for the externalisation of migration management in the next EU budget. In the next section, we will look at the evolution of externalisation policies on the route that most interests Italy: the contribution by Sara Prestianni (EuroMed Rights) will provide an overview of the dangerous situation of constant violation of human rights in the Central Mediterranean; in the next two chapters, researchers Jérôme Tubiana and Clotilde Warin will describe the evolution of borders externalisation in Sudan and in the Sahel region.

⁵ - With regard to resettlements, the Commission will ask Member States to underwrite new pledges after 2020, whereas for 2020-2022, pending the new framework regulation, resettlement places are limited to 29,500.

⁶ - Regulation (EC) no. 810/2009. «The European Commission evaluates the cooperation of third countries on the readmission of irregular migrants, taking into account the management of borders and the prevention and control of migrants traffic as well as of the transit of irregular migrants. If a third country does not cooperate, the Commission may present a decision proposal to the Council to temporarily apply certain rules in a restrictive manner. Conversely, if a country cooperates sufficiently, certain rules may be applied more generously».





1. HOW IS EXTERNALISATION FUNDED?

THE BUDGET FOR MIGRATION CONTROL IN THE NEW 2021-2027 MULTIANNUAL FINANCIAL FRAMEWORK

GIORGIA JANA PINTUS - *Externalization Policies Watch project*

THE NEGOTIATIONS FOR THE NEXT MFF: FLEXIBILITY VS ACCOUNTABILITY?

After the 2015-2016 crisis of EU migration policies, migration control has gained unprecedented relevance in the discussion on the next multiannual budget with which the EU will decide the allocation and amount of resources for European policies for the next 7 years. The idea of the European leaders was that after 2020 the EU should spend more resources to contrast ir-

regular migration, combining the internal and external dimension of migration policy, thus strengthening its action in non-EU countries to block the main routes to Europe. The aim being, indeed, to tackle the causes of migration and, most importantly, to keep migrants in the countries of transit and origin, while strengthening the EU border.

In the new 2021-2027 budget, presented by the Juncker Commission in May 2018,⁷ total resources are distributed across seven headings, representing the EU's priorities, and for the first time one of the headings is "migration and border management" (Heading 4). External action in the migration field will be financed through the NDICI (Neighbourhood, Development and International Cooperation Instrument), which gathers the resources for external action under Heading 6 (Neighbourhood and the World); however, with a view to a "global" approach to migration control, some resources will also come from Home Affairs instruments (i.e. from Heading 4 and Heading 5, Security and Defence).

The geographic focus for cooperation with non-EU countries is on the Neighbourhood and Africa, whereas the thematic priorities reflect once again the dangerous combination of migration, security, and development cooperation for the purpose of externalising migration management. An outdated approach which, especially over the past five years, has proved unsuccessful, emergency-oriented in its method and security-oriented in its objectives. After 2015, the difficulty of obtaining rapid results in terms of control of migration flows led, in fact, to the creation of ad hoc external action instruments in the field of migration, characterized by ample flexibility to allow to "respond to the crisis", without, however, improving in any way the efficacy of the projects implemented in third countries.⁸ On the contrary, the experience of the Trust Fund for Africa has uncovered the multiple risks behind flexibility at all costs, firstly due to the use of simplified procedures at the expense of transparency and controls on resources, secondly due to the diversion of funds intended for development aid and used to finance the containment of migration flows, with serious repercussions on the human rights of migrants. The Coronavirus pandemic led the new von der Layen Commission to issue a second proposal,

⁷ - https://eur-lex.europa.eu/resource.html?uri=cellar:f5965d24-4ed6-11e8-be1d-01aa75ed71a1.0023.02/DOC_1&format=PDF

⁸ - See the European Court of Auditors on the Fund for Africa: <https://www.eca.europa.eu/it/Pages/DocItem.aspx?did=48342>

presented on 27 May 2020,⁹ which merges the long-term budget with a recovery instrument (the Next Generation EU Recovery Instrument). The new proposal increases the budget and confirms the 2018 architecture, emphasizing flexibility through emergency instruments that can be allocated with simplified procedures, or through reserves within the Asylum and Migration Fund (AMF), the Internal Security Fund (ISF) and the Neighbourhood Instrument (NDICI), which can be activated, for instance, in situations of “migratory pressure”.

On 21 July 2020, the EU leaders reached political agreement on a budget proposal of €1,074.3 billion¹⁰ rejected by the EP. After months of negotiations, on 10 November the EP and the Council Presidency reached a compromise that increased the European Council’s proposal by 16 billion, to be invested in key programmes. This integration includes an additional 1.5 billion for border management, and 1 billion for the NDICI.¹¹

INSTITUTIONAL BALANCE AND MULTIANNUAL BUDGET

The need to find a balance between simplification of the general architecture, flexibility in the allocation of resources, predictability and transparency is part of a context of inter-institutional balances concerning the overall management of financial resources between the Commission, the strategic interests of the Council and the need for the EP to protect its role.

The regulation regarding the MFF is approved through a special legislative procedure set out in Article 312 of the Treaty on the Functioning of the European Union (TFEU), while the sectoral regulations on individual programs are adopted with the ordinary legislative procedure. Although according to the TFEU the European Council may only express conclusions that are political in nature, during negotiations for the 2014-2020 MFF the Council intervened in decisions regarding even detailed aspects of the regulation and programmes, a trend that is being reiterated in the negotiations currently underway. In fact, in its resolution of 10 October 2019, the Parliament expressly declares that it is prepared to withhold its consent until a satisfactory agreement is reached, and “therefore calls on the European Council to refrain from adopting

detailed and purportedly binding conclusions based on the MFF negotiating box, as this would amount to direct interference in the legislative sphere.¹²”

A delicate aspect of negotiations is the discussion on the use of delegated acts and implementing acts, which are relevant in the implementation phase of the programmes. With regard to delegated acts –which are non-legislative acts with which the Commission can supplement or modify non-essential elements of a legislative act– Parliament and Council can present objections that prevent its entry into force; whereas, in the case of implementing acts, Parliament can only be informed, without any possibility of intervention. Especially in negotiations on the NDICI, Parliament tries to bring the planning documents under its scrutiny by ensuring that they are transposed into delegated acts.¹³ The use of delegated acts would significantly increase the role of Parliament, ensuring greater institutional dialogue and monitoring, which are essential to ensure proper governance of external dimension resources.

(see Table 1)

⁹ - https://ec.europa.eu/info/strategy/eu-budget/eu-long-term-budget/2021-2027_en

¹⁰ - https://www.europarl.europa.eu/doceo/document/TA-9-2020-0206_EN.html

¹¹ - https://twitter.com/EP_Budgets/status/1326217994620588033/photo/1

¹² - https://www.europarl.europa.eu/doceo/document/TA-9-2019-0032_IT.html

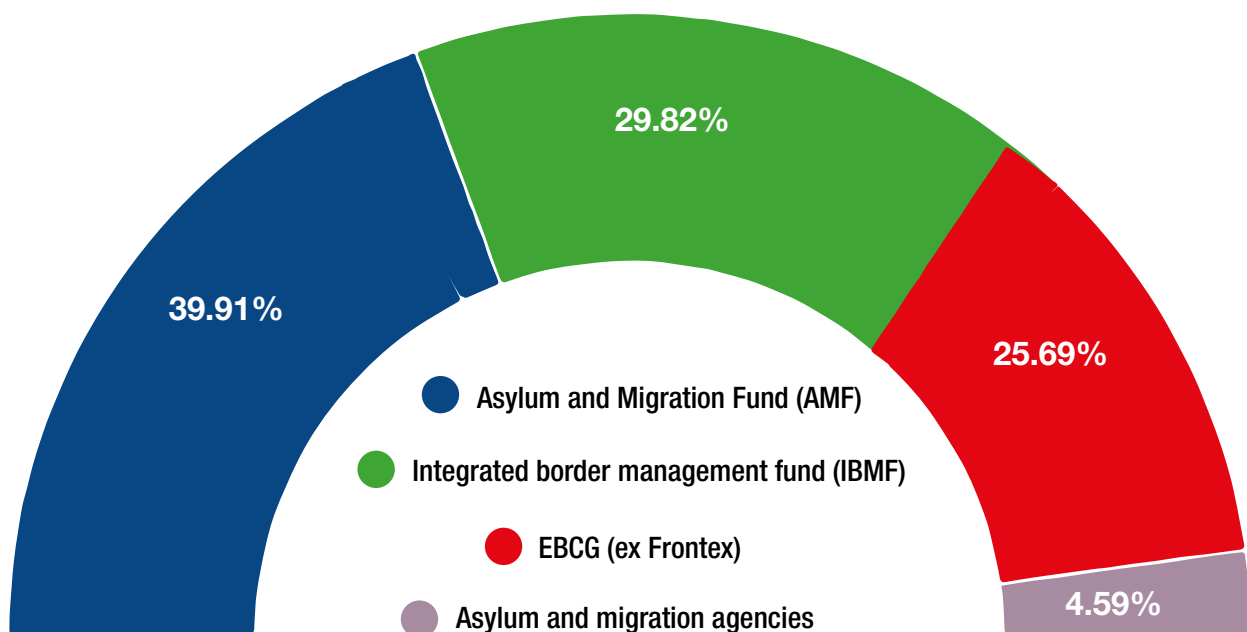
¹³ - [https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/644173/EPRS_BRI\(2019\)644173_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/644173/EPRS_BRI(2019)644173_EN.pdf)

The current state of negotiations suggests that the new financial programming will be aimed at supporting the objectives of the European migration policy mainly in terms of border management, repatriation, and externalisation of migration control in countries of origin and transit, through resources from both home affairs instruments and the new instrument for the external dimension, the NDICI. This raises a number of concerns, especially in terms of diversion of resources intended for integration and development towards actions to combat migration and strengthen the borders.

Heading 4 includes the Asylum and Migration Fund (AMF), the former Asylum, Migration and Integration Fund (AMIF),¹⁴ and the new Fund for Integrated Border Management (IBMF) and contributes significantly to the budget of the EBCG, formerly Frontex. According to the Commission, the added value of the migration and asylum heading should be to manage high numbers of arrivals of migrants and asylum seekers also with instruments for legal migration, to support SAR initiatives, and to organise the return policy. **However, the current proposals show an exponential increase in resources for repatriation and border management, at the expense of resources dedicated to strengthening the common asylum system, increasing legal migration routes and standardising reception.**

In fact, according to data from the European Commission, the funds allocated to migration, asylum and borders have increased by more than 160% compared with 2014-2020.¹⁵ However, of the resources set aside for Heading 4 in the proposals and in the compromise, nearly 60% would be used for border management, less than 40% for “migration and asylum” and the remainder as margin for sudden events.¹⁶ (See chart 1)

CHART 1 – COMPROMISE NOVEMBER 2020 – HEADING 4 – MIGRATION AND BORDER MANAGEMENT



*ARCI ELABORATION OF EUROPEAN COMMISSION DATA

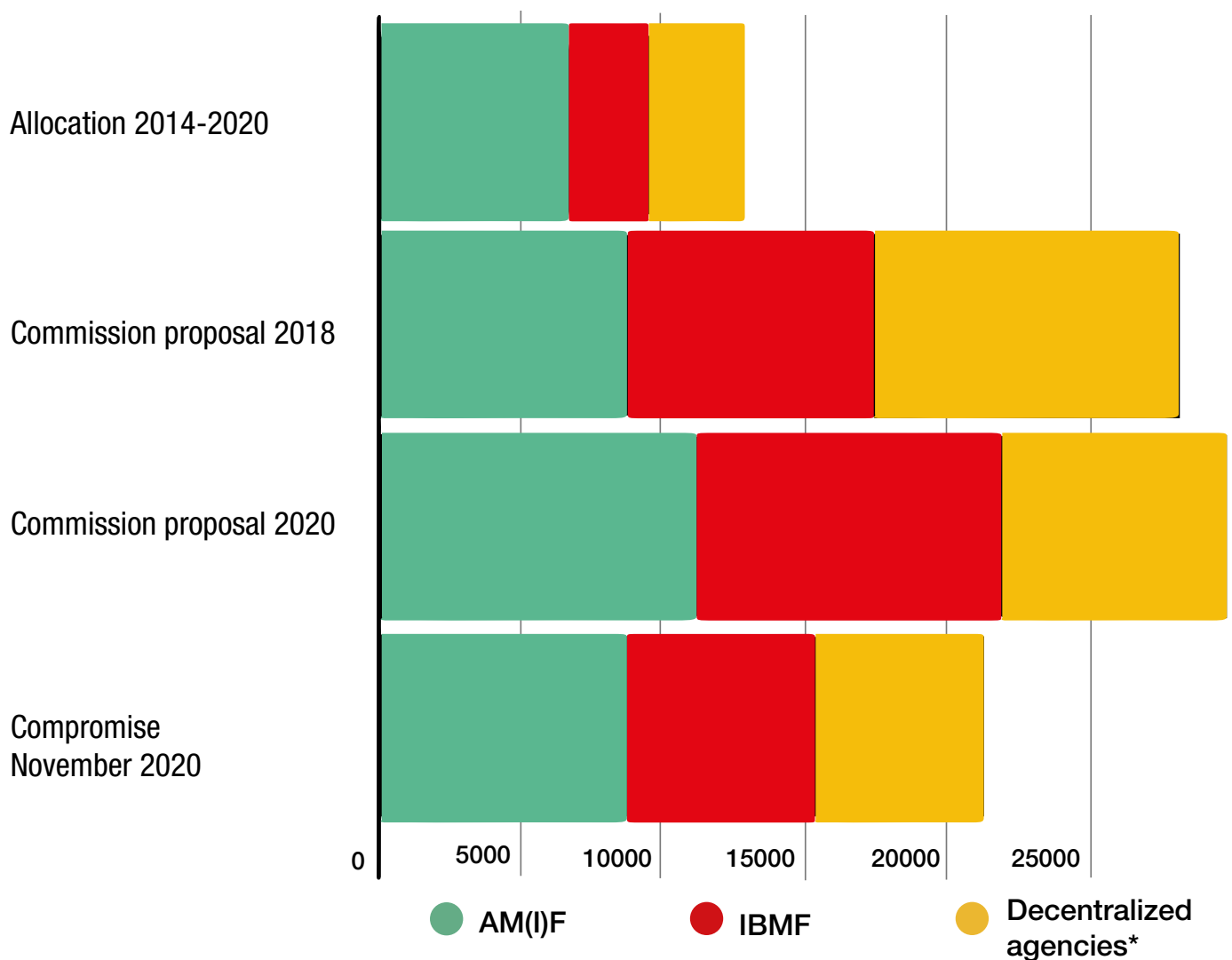
¹⁴ - With regard to the Asylum and Migration Fund, new resources will be allocated to the first phases of reception and to repatriation, with the exclusion of long-term integration which, instead, will be supported through the cohesion policy.

¹⁵ - [https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/646135/EPRS_BRI\(2020\)646135_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/646135/EPRS_BRI(2020)646135_EN.pdf).

¹⁶ - https://cadmus.eui.eu/bitstream/handle/1814/61044/RSCAS%202019_05rev.pdf?sequence=4&isAllowed=y Since 2000, the budget for border control has always exceeded those for migration and asylum, with the exception of the years of the so-called refugees crisis, when an increase was registered in the resources dedicated to the EASO (+318% allocations in 2014) and the AMIF (+112%), as well as of the resources for FRONTEX (+161%), thus laying the foundations to reform the agency and transform it into the EBCG.

Most importantly, 40% of the AMF fund will be dedicated to repatriation, whereas the remaining 60% to asylum and reception, through national programmes and thematic and emergency actions. Compared with the allocations of the 2014-2020 MFF, the 2018 proposal marked an increase of almost 300% in funding for decentralized border management agencies and almost 200% for the IBMF fund, compared with an increment of 36% for the AMF and 77% for decentralized migration and asylum agencies.¹⁷ In the compromise between the EP and the Council, according to the data currently available, expenditure would increase by 120% on borders and by 30% on asylum and integration. (See charts 2 and 3).

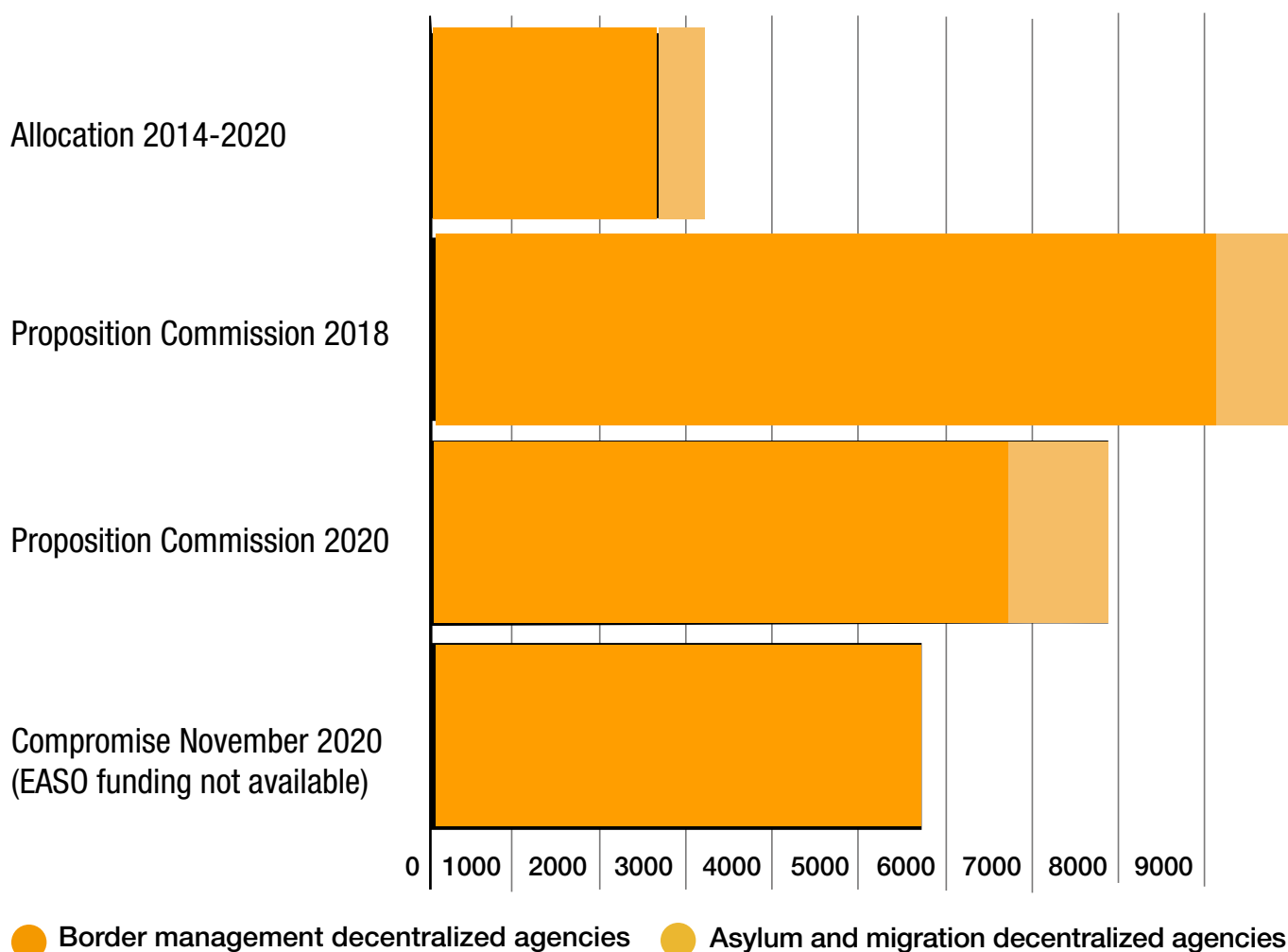
CHART 2 - MIGRATION AND BORDER MANAGEMENT FUNDING - ALLOCATION 2014-2020 AND NEXT BUDGET PROPOSALS



*ARCI ELABORATION OF EUROPEAN COMMISSION DATA

¹⁷ - [https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/646135/EPRS_BRI\(2020\)646135_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/646135/EPRS_BRI(2020)646135_EN.pdf)

CHART 3 - * DECENTRALIZED AGENCIES



ARCI ELABORATION OF EUROPEAN COMMISSION DATA

The compromise allocates a “significant” portion of internal dimension instruments -the IBMF (Fund for Integrated Border Management), AMF (Asylum and Migration Fund), and ISF (Internal Security Fund, part of Heading 5)- to the external management of migration. The EP had requested a cap of 5% for AM(I)F and 4% for IBMF for spending in third countries, given that the absence of such a cap would significantly undermine the possibility of directing the resources primarily towards strengthening the asylum system and creating a fair and standardised reception system. Furthermore, external actions should be clearly defined and meet the objectives of the fund establishing monitoring mechanisms that ensure the respect of human rights, without financing the containment of migrants in third countries.¹⁸

At present, approximately 73% of the overall budget for migration and asylum is estimated to be intended for repatriation, management and external control of migration, whereas integration and asylum programs will be allocated about 27% of the resources.¹⁹

The objectives of the home affairs funds are defined in synergy with the instruments for external

¹⁸ - <https://www.ecre.org/wp-content/uploads/2019/05/Policy-Note-18.pdf>

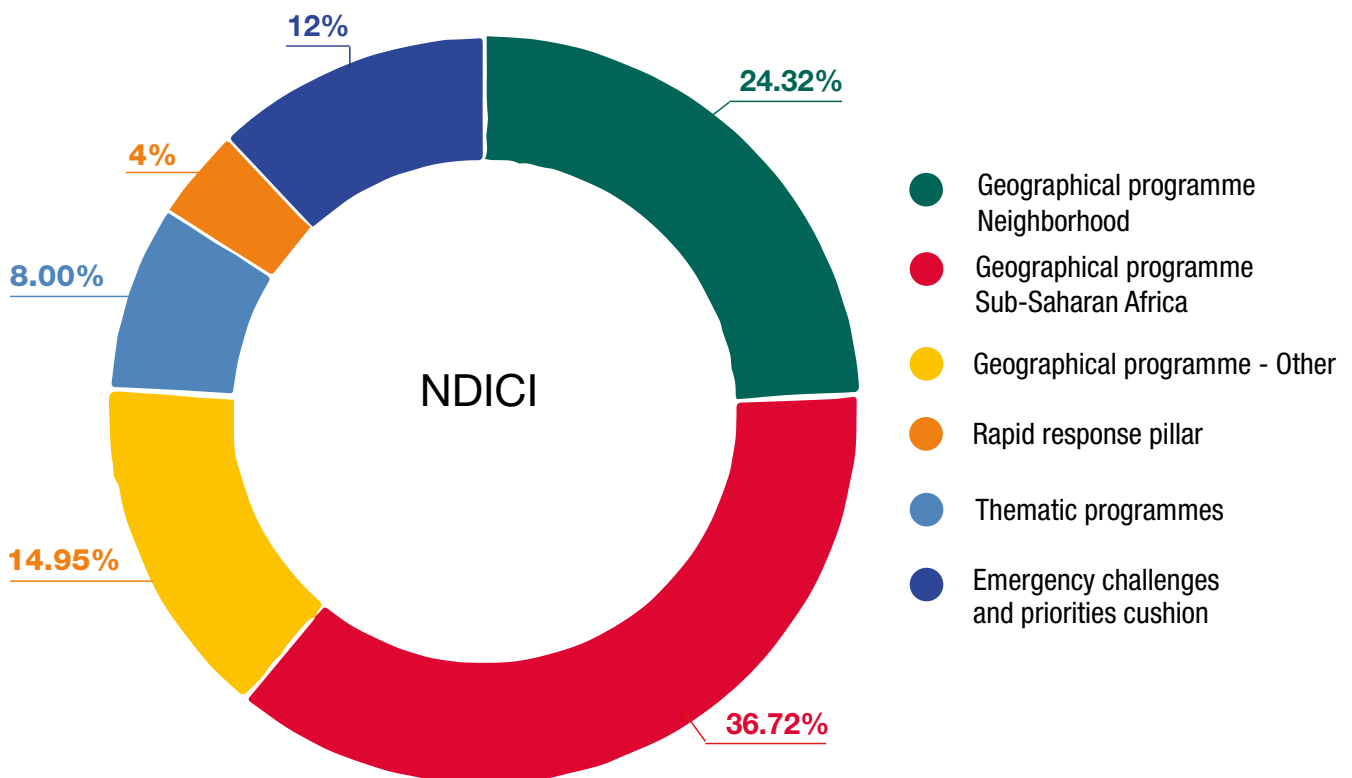
¹⁹ - The percentage includes spending for the external dimension as proposed by the EP; see: <https://euromedrights.org/publication/eu-migration-budget-more-border-management-less-respect-for-human-rights/>

action and, according to the Commission, will serve to support cooperation with third countries for the management of migration and security and to contribute to the implementation of the 2016 Partnership Framework on Migration, mainly to implement the return policy.

The NDICI (Instrument for Neighbourhood, Development and International Cooperation) accounts for approximately 72.5% of funds allocated to Heading 6, incorporating most of the programmes dedicated to the external action in the current MFF (including the European Development Fund), with an increase in resources of over 10% in real terms, compared with current allocations for external action.²⁰ The issue of migration is widely addressed in the different fund lines, both in the geographic and thematic components. According to the Commission’s 2020 proposal, a horizontal spending target of 10% will be dedicated to migration, in particular to “[address] the root causes of irregular migration and forced displacement and to [support] migration management and governance including the protection of refugees and migrants’ rights”. The priorities identified are still vague, but the Commission refers to international protection, border strengthening and support for return, readmission, and reintegration policy. In addition, resources would be drawn from the “rapid response pillar” and the “emergency cushion fund” to deal with emergency situations (*see chart 4*).

Looking at the experience of the Trust Fund, the crucial issue will thus be how many resources will be allocated to the management of migration in terms of

CHART 4 - NDICI



*ARCI ELABORATION OF EUROPEAN COMMISSION DATA

²⁰ - See Action Aid: https://www.actionaid.it/app/uploads/2019/10/ILP_AA_2019.pdf



development and regular mobility, and how many to the return policy and to security objectives aimed at constraining migration flows. As this is the instrument for development cooperation, the proposal specifies that 92% of the actions financed through NDICI must qualify as development aid.²¹ However, it is unclear how much of the migration spending will qualify as development aid. Most importantly, what is concerning is that cooperation with neighbouring countries is based on the “more for more principle” which makes aid conditional on, among other criteria, the willingness and ability of third countries to cooperate on issues of migration, namely on returns, readmissions and the strengthening of borders.²² The proposal to make migration a criteria in the conditional approach to aid is, indeed, a key element of negotiations. Parliament, in accepting a single instrument for the external dimension, had requested clearer and more distinct objectives for the various policies and actions. In particular, MEPs called for an increase in the funds allocated to human rights and democracy activities, the suspension of assistance in case of human rights violations, and the introduction of spending caps on emergency budgets.²³ In this sense, the need for a flexible and adaptable budget, which responds to criteria of efficiency and speed, must necessarily be balanced by a governance that ensures full democratic control and accountability without sacrificing predictability, the effectiveness of long-term development policies, and the respect for human rights.

²¹ - The Parliament proposes 95% instead. See the position of the EP on the instrument <https://www.europarl.europa.eu/news/it/press-room/20190321IPR32120/external-action-more-funds-for-human-rights-development-and-peace>

²² - Allocations would be decided based on an annual progress system measured with a variety of criteria, including the respect of human rights, rule of law, democracy, economic governance and “cooperation on migration issues”.

²³ - <https://www.europarl.europa.eu/legislative-train/api/stages/report/current/theme/budgets-budg/file/mff-ndici>

AN OUTLOOK ON THE PACT ON MIGRATION AND ASYLUM AND ON THE BUDGET FOR THE EXTERNAL DIMENSION: THE SOLIDARITY MECHANISM



The externalization of borders and the external control of migration is at the heart of the proposal for the Pact on Migration and Asylum.

The migration management policy is based on an unequal and, in the long run, unsustainable idea of partnership with third countries in which conditionality is the main tool. In fact, the new proposal for the Regulation on Asylum and Migration Management²⁴ explicitly refers to cooperation with third countries to facilitate returns and readmissions, envisaging the possibility for the Commission to adopt “any measure” to facilitate this objective, showing an ability to exert influence that goes beyond the Visa regime.

This is the basis of the controversial new system of “solidarity and fair sharing of responsibility” proposed in the Regulation, with which the EU aims to give a new framework to its externalisation strategy. As is known, the solidarity system provides a series of alternative actions available to member states to assist other MS, both voluntarily and in situations of migratory pressure or disembarkation after SAR operations. Solidarity can therefore take the form of relocation of asylum seekers or holders of international or humanitarian protection, repatriation sponsorship (i.e. covering the expenses and managing the procedure) or other alternative forms of solidarity. The relocation mechanism would be compatible with the objectives of the Asylum and Migration Fund and could be implemented

through the thematic component, while the pervasive return system would obviously be implemented mainly within the framework of the new Frontex mandate. Overall, a total of €1,113,500 million from the thematic component of the AMF will be allocated to the implementation of the Commission’s proposal.

²⁴ - <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1601291110635&uri=COM%3A2020%3A610%3AFIN>

Please see also the other legislative proposals by the Commission, all of which show the essential nature of the external dimension, the strengthening of the borders and the containment of migration flows in third countries. The Regulation proposal on situations of crisis and force majeure would affect the asylum and migration instruments and the flexibility mechanism. The pre-entry screening mechanism would, instead, be funded through the IBMF, for a total of €417,626 million. The Recommendation proposal on an EU mechanism for preparedness and management of crises related to migration, would drain resources from all relevant instruments, both from the internal and external dimension, including emergency components.



In addition to concerns regarding the poor safeguards for human rights associated with the repatriation machine, the main issue is the possibility for member states **to finance alternative solidarity measures, both in EU border countries and in third countries.** These measures could take different forms, from supporting the reception capacity of the infrastructure of the country “hit by the emergency”, to financing actions for the management of asylum and migration in the non-EU countries of origin. At the moment, it is unclear what kind of actions will be feasible. However, it is conceivable **that solidarity among member states could lead to financing hotspots in border member states, or the strengthening of borders and push backs in transit countries, or even subsidising asylum management measures in countries where migrants and asylum seekers are systematically discriminated against and where they have no possibility of accessing actual protection.** Certainly, member states are encouraged by the Commission to direct their actions towards repatriation, for example by financing “**the infrastructure and centres necessary to implement return decisions**”, with the real risk of **supporting deportations, arbitrary detentions, and other repressive measures in already unstable contexts.** It remains to be seen whether and how the objectives of these actions in third countries will be defined, and whether control mechanisms will be established to ensure the correct use of the resources allocated, as well as the respect for human rights and international standards.



2. THE CENTRAL MEDITERRANEAN SPELLS THE SHIPWRECK OF INTERNATIONAL LAW

SARA PRESTIANNI - *Asylum and Migration Programme Officer, EuroMed Rights*

Since January 2020 nearly one out of two migrants setting off from Libyan coasts were subjected to “push back by proxy” procedures by the “Libyan coastguard”, supported and funded by Italy and Malta with national and EU funds. This systemic infringement of the non-refoulement principle established by the Geneva Convention seems to be generalized across Europe and its external borders: from the Balkan route to the Greece-Turkey border (8521 refoulements on this route between March and November 2020), from Cyprus towards Turkey and, more recently, towards Lebanon, and from Algeria towards Niger (6747 refoulements from 20 September to early November) without any actual sanctions having been imposed against the countries that are refouling migrants.

In the Central Mediterranean, between 1 January and 2 November 2020, a total of 27,962 men, women, and children landed in Italy, of whom 16,300 from Libya and 11,620 from Tunisia.²⁵ Of these, 10,000 were pushed back to Tripoli and abandoned to a destiny of detention, violence, and exploitation. More than 500 people have died in the Mediterranean in 2020, considerably more if we include the shipwrecks of ghost boats, which are often the result of failure-to-rescue policies, and of the criminalization of those who save lives at sea. Between August 17 and 20 alone, there were 4 shipwrecks with a tragic death toll of 100 people.

The push back machine, which since 2016 has allowed Libya to send over 60,000 people back to the port of departure, is fruit of an operation in which Italy is the main partner, with the political and financial support of EU institutions –mainly through the Trust Fund for Africa– and, more recently, of Malta.

Three years after the signature of the Memorandum of Understanding between Italy and Libya in 2017 –renewed based on promises of change that went into oblivion– the situation of the Central Mediterranean has become increasingly concerning.

In recent years, the logic of externalisation of border control, combined with a policy of criminalisation of solidarity, the creation of a Libyan SAR zone and the “inaction” of national rescue vessels, have left the Mediterranean to the “Libyan coastguard” to carry out refoulement operations, thus tragically increasing the number of shipwrecks. The criminalisation of NGOs, a sadly common practice since 2017, has also targeted cargo vessels, indirectly pushed into changing course when approaching boats and dinghies at distress. The risk is, indeed, to remain blocked at sea for a month without being assigned a safe harbour, as was the case for the Maersk cargo vessel. On 5 August, Maltese authorities asked the tanker flying the Danish

²⁵ - https://www.interno.gov.it/sites/default/files/2020-11/cruscotto_statistico_giornaliero_02-11-2020.pdf

flag to welcome on board 27 migrants, including unaccompanied minors, who were drifting 70 nautical miles off the coast of Libya. Malta then denied the cargo vessel the right to dock, in breach of Maritime Law, to send a clear dissuasive message to other commercial vessels. The tanker was then blocked offshore, with consequent economic losses, forcing the crew and migrants to survive in appalling health and food conditions for 40 days. On multiple occasions, cargo vessels, tankers and fishing vessels have been ordered to bring the migrants back to Tripoli.²⁶

Since 2016, the Libyan coastguard has been trained, supported and equipped, so as to make it the main player to take action in the Central Mediterranean in order to stop departures and push back the few migrants that manage to leave. This has been done within multiple contexts: with operations coordinated by EunavFor Med (Sophia and later Irini), with the IBM project within the EUTFA (coordinated by Italy) and, as recently discovered, through the activity of EUBAM and Frontex.

In April 2020, Malta apparently became a key player in the collaboration with Tripoli when, in a letter addressed to Josep Borrell, the EU High Representative for Foreign Affairs and Security Policy, it asked the EU for financial support “to boost the empowerment of the Libyan coastguard in enhancing the control of its borders, as well as concretely ensuring that Libya represents a safe port for the disembarkation of migrants.” A few days later, on 22 April 2020, in a press conference in the margins of a meeting of the EU Foreign Affairs Ministers, Borrell reassured Malta that “[the Commission] has been reorienting the amount of resources already allocated to Libya (...) also to give resources to the Libyan coastguard to continue patrolling the territorial waters of Libya.”

Only a month later, on 28 May 2020, Malta signed a “Memorandum of Understanding for combatting illegal migration” with the GNA represented by Fayez Mustafa Al-Sarraj. The Memorandum provides for the setting up of two coordination centres –one in Valletta and one in Tripoli, operational since July 2020– to “combat illegal migration in Libya and in the Mediterranean region”, both funded by Malta, as specified in the agreement. However, article 5 of the Memorandum establishes that “the Republic of Malta shall propose to the European Commission and the European member states the increase in financial support in order to help the Government of National Accord in securing the southern borders of Libya, and the provision of the necessary technologies for border control and protection”, as well as funding towards additional maritime assets necessary for the interception of migrants at sea. **During the summer, there have been numerous testimonies of the Maltese Armed Forces allegedly attempting to push a vessel of migrants back to Libya or to the neighbouring country of Italy.**

A recent visit to Malta of the representatives of the United Nations Office for Human Rights²⁷ has unveiled dramatic situations also after disembarkation. Some migrants told of being held for months, with little access to daylight, clean water and sanitation. They also reported of severe overcrowding, poor living conditions and limited contact with the outside world, including access to lawyers and civil society organisations. “You’re in jail in Libya and now you come to Europe and prison again”, said a migrant.

²⁶ - <https://forensic-architecture.org/investigation/nivin>

²⁷ - <https://timesofmalta.com/articles/view/un-slams-shocking-conditions-for-migrants-in-malta.821692>

Besides the flagrant infringement of the non-refoulement principle established by the Geneva Convention, arbitrary detention and systemic push backs point also to the violation of the European conventions and of the EU Charter of Fundamental Rights, and specifically of the right to life, the prohibition of inhuman and degrading treatment, the prohibition of collective expulsions, the right to asylum and to an effective remedy. These are the grounds of the appeal filed with the Constitutional Court of Malta on 4 November 2020 by 52 victims of refoulement to Libya and by 2 family members of migrants deceased during the operation.²⁸ The facts refer to last April, when AlarmPhone²⁹ notified the presence of a boat at distress in Maltese SAR waters. The boat was spotted by a Frontex aircraft and by a Maltese vessel 24 hours later. After 3 days, they were reached by a fishing boat and brought back to Libya and the spiral of detention.

The stories told by the migrants pushed back to Libya are similar in their horror: after surviving the torture camps in Bani Walid, being detained in official camps and then managing to get on a boat, one out of two people are sent back to the detention centres or disappear in unofficial centres. Even those who live outside the centres are still at the mercy of an explosive situation, being used as current currency for militia groups at war with each other.

There are many reports of refugees and migrants in Libya being trapped in a cycle of severe violations and abuse of human rights, including prolonged arbitrary detention and other illegal deprivations of freedom, torture, killings, rape, forced labour and exploitation by government and non-government actors, in a climate of almost complete impunity.

The numerous appeals of the MEPs of the LIBE Committee³⁰ –clamouring to stop cooperation with the so-called Libyan coastguard–, and the reports of journalists and associations of more and more opaque interests and unbounded violence, have apparently gone unheard. This kind of cooperation appears to be unchallenged, even by the recent arrest of Bija³¹ – the epitome of double-faced players: smuggler and coastguard officer, sent to Italy in June 2017 a few days after his name popped up in a report of the UN Security Council. Oblivion surrounds also the violence suffered by migrants, as with the events of 28 July,³² when 3 migrants were killed and 4 injured by the “Libyan coastguard” after a push back operation at sea, for trying to escape a sadly familiar fate in the detention centres.

Faced with these accusations, Italy, Malta and the members of the EuroMed 7, which met on 11 September 2020 in Corsica, reaffirmed, instead, the need for cooperation with the Libyan authorities to “acquire control over the land and sea borders” (article 7 of their joint declaration).

In the Mediterranean of 2020, another judicial limbo awaits those who manage to avoid being intercepted and pushed back to Libya: **quarantine vessels**. Created with the excuse of

²⁸ - <https://timesofmalta.com/articles/view/migrants-demand-payment-of-damages-after-pushback-to-libya.829552>

²⁹ - <https://alarmphone.org/it/chi-siamo/>

³⁰ - <https://www.europarl.europa.eu/news/fr/press-room/20200427IPR77915/stop-a-la-cooperation-et-au-financement-des-garde-cotes-libyens>

³¹ - https://www.theguardian.com/global-development/2020/oct/16/senior-libyan-coastguard-commander-arrested-for-alleged-human-trafficking?fbclid=IwAR2NAzQKPdwm0d6ZUL3iu8_x6F6sStj0UJ1wgcVMQAYTXRXE08b2bQoyKmc

³² - https://www.lemonde.fr/afrique/article/2020/07/28/trois-migrants-soudanais-tues-par-balles-sur-la-cote-libyenne_6047529_3212.html



containing the COVID-19 epidemic, the first experiment was the Maltese Captain Morgan, a tourist cruise ship turned into a “floating hotspot” in June 2020, while waiting for possible relocation in other European states. Up to 425 migrants rescued during various SAR operations in Maltese water– were held aboard a ship with a maximum capacity of 250 people.

They were finally allowed to disembark in the port of Valletta after more than 5 weeks of unjustified detention at sea.

After Malta, Italy also established a quarantine system on board of vessels with a capacity of 8,000 people, justified by the health crisis. The first quarantine vessel was loaded at the beginning of August at the Cala Pisana wharf in Lampedusa. It was mainly used to “lighten” the hotspot on the island where more than 1,000 people were being held.

On 6 October, tragic news arrived of the death of 15-year old Abou after 12 days aboard one of the quarantine vessels. **The story of Abou recounts the absurdity of confinement policies, where reception policies are, instead, necessary to take charge of the mental and physical health of migrants.** Abou had been transferred on the quarantine vessel *Allegra* on 18 September. The 15-year old from the Ivory Coast bore evident signs of torture on his body, as is often the case for those coming from Libya.

In October 2020, the news uncovered the practice of transferring migrants with positive swab tests from the reception centres aboard quarantine vessels, to then release them on the streets as soon as they test negative.³³ On board, there are people of full age and minors, with a ventilation and protection system that raises many doubts not only on the ability to contain the epidemic on quarantine vessels, but also on the risk of further outbreaks, as explained by some infectivologists.³⁴ **This system –which is, in fact, discriminatory, as it was specifically designed only for foreigners– entails serious rights violations, especially with regard to the detention of minors and the transfer of migrants who tested positive to COVID-19.** The civil society has protested against this practice, reporting the use of these facilities, and successfully obtaining a promise that minors would no longer be detained there, and that transfers from reception centres would cease.³⁵

³³ - https://www.redattosociale.it/article/notiziario/navi_quarantena_lamorgese_trasferimenti_dai_centri_misura_eccellenza_reperite_strutture_

³⁴ - https://www.huffingtonpost.it/entry/massimo-galli-la-nave-quarantena-non-funziona-fara-la-fine-della-diamond-princess_it_5f2a8386c5b6e96a22abb4d1

³⁵ - https://www.redattosociale.it/article/notiziario/navi_quarantena_stop_ai_trasferimenti_dai_centri_il_viminale_rassicura_le_organizzazioni?fbclid=IwAR3aYagbzqQTdbCLLZ-a5WWEJHE8znP054poM59Nx_OEUZaMZ77r-AnNLp4

ITALY-TUNISIA

In the summer of 2020, we saw once again the same images we had seen in 2011, and more recently in 2017, of small boats departed from the Tunisian coasts and headed towards Lampedusa and Sicily. The many reasons that push people, mainly

youngsters, to leave Tunisia are rooted in the country's disastrous social and economic situation, and in an increasingly uncertain future due to the health crisis, as well as to instances of personal persecution. In 2020, 11,600 Tunisians arrived on the Italian coasts, often with autonomous landings. Italy's response immediately took on peremptory tones, through the words of the Italian Minister of Foreign Affairs Luigi Di Maio, who threatened neighbouring Tunisia to apply the principle of negative conditionality and cut development funds, lacking the country's commitment to block departures. The closure of the borders due to the health crisis forced a setback, between March and July, in the implementation of the "readmission agreement", signed in 2011, which provides for the expulsion of 40 citizens per week. Between January and the end of September 2020, expulsions totalled 717, of which 536 were carried out after the stop induced by the health crisis, at a rate of 20 expulsions per flight, 40 since August, for a total of 80 expulsions per week.

On 21 September, Italy obtained the green light from Tunisia to double the weekly number of expulsions up to 500 Tunisians per month. Charter flights will be added to the two bi-weekly flights already scheduled, according to Rome's plan. Migrants are thus transferred from the quarantine vessels to the Repatriation Centres distributed across Italy. A minor, who was being detained in Ponte Galeria, was released only thanks to the timely intervention of the associations and of MP Majdi Karbai. Italy's only interest seems to be filling flights, unconcerned by what happens to those people, who are left at the Enfidha airport with nothing in their hands but, for many of them, the desire to leave again.

The Nice attack –attributed to a young Tunisian who had landed in Lampedusa in September– expedited a new cooperation plan with Tunisia which involves France as well as Italy, and which resembles a naval blockade rather than a counter-terrorism operation: strengthening of air interception measures and patrolling by Italian and French vessels to block crossings until the arrival of the Tunisian counterparts, who will pull the boats back to the port of departure. Yet another plan towards a system of push back by proxy, sanctioned once again by bilateral agreements but unratified by the Parliaments of the countries involved.

THE "NEW" PACT ON MIGRATION AND ASYLUM WOULD WORSEN THE MEDITERRANEAN'S ALREADY TRAGIC SITUATION

If approved by the Council and Parliament, the Pact presented on 23 September would further worsen the serious situation of the Central Mediterranean with regard to human rights violations. In a bizarre logic of "solidarity", European countries might support first-border countries in strengthening their external dimension as an alternative to the reception of migrants relocated after

disembarkation. For Italy and Malta, such a support would entail strengthening the capacity of the Libyan and Tunisian coastguards even further, to make push backs even more systemic. The impact on first-border Member States would be equally devastating: the pre-screening proposal –which establishes zones that are physically inside, but legally outside, the European territory– would only increase the risk of detention, limiting the possibility to identify vulnerable situations, and would result in direct expulsion or, at most, in a superficial analysis of the asylum procedures, while the migrants are being detained.



3. THE IMPACT OF THE EU MIGRATION POLICY IN MALI

CLOTILDE WARIN - *Researcher*

Blocking migrants travelling to Europe, thousands of kilometres away from the European continent, starting from the Sahara: this is one of the main goals of the EU migration policy, which has chosen to curb migration flows at any price, delegating the countries of origin and transit of migrants to do the job in exchange for money. Thanks to the EU Trust Fund for Africa established in 2015, partner countries are encouraged to monitor borders that are difficult to control because they are at the heart of the desert and often under the control of armed groups. The funds allocated by the EU are a blessing for bankrupt countries, which are hardly in the position to reject the contract. Niger has thus become the EU's best pupil: in May 2015, it promptly issued a law that criminalises smugglers and imposes a punishment of up to ten years of imprisonment.³⁶ The statistical results of the law speak for themselves, and are often stressed and exploited by the EU. Over the span of a few years, the flow of migrants crossing the Sahara to the Niger-Libya border has drastically decreased. According to the figures referred to by the Nigerian President Mahamadou Issoufou, before 2016 100,000 to 150,000 migrants passed through Niger every year (an estimated 400,000 migrants in the most critical years), coming down from 5,000 to 10,000³⁷ people in 2019.

This decrease does not accurately reflect the complexity of the situation. In fact, the candidates for exile have never stopped travelling, but many of them have chosen longer and more dangerous alternative routes. Before 2015, migrants' pick-ups left Agadez once a week, escorted by the Nigerian army to reach the Libyan border without complications; now migrants are forced to choose much less safe routes, and are sometimes abandoned in the middle of the desert by the drivers who fear being arrested by the army. According to the International Organization for Migration (IOM), about 20,000 migrants were rescued in the Nigerian desert between 2016 and 2019, an average of 1,200 people per month. The number of deaths in the Sahara has also drastically increased since 2015, according to the accounts kept as part of the IOM's³⁸ Missing Migrants project.³⁹

Since the Agadez-Libya direct route was blocked, some smugglers, mostly Tuareg, have chosen to leave Niger and retrace old routes abandoned after the fall of Gaddafi in the early 2010s, particularly in northern Mali. The Malian coaxers (intermediaries) and transporters who, until then, had operated on the Agadez-Assamaka-Inguezam axis between Niger and Algeria, have

³⁶ - https://www.unodc.org/res/cld/document/ner/2015/loi_relative_au_trafic_illicite_de_migrants_html/Loi_N2015-36_relative_au_trafic_illicite_de_migrants.pdf. See chapter III, art.16. p. 4.

³⁷ - <https://www.jeuneafrique.com/706613/societe/le-niger-et-litalie-saluent-la-chute-du-flux-de-migrants-africains-vers-leurope/>

³⁸ - <https://missingmigrants.iom.int/downloads>

³⁹ - <https://www.clingendael.org/sites/default/files/2018-09/multilateral-damage.pdf> p. 26.

also returned to the north of Mali. With the criminalisation of the transportation of migrants, the European Union has unwittingly reopened routes in an unstable region: in northern Mali, the transportation of migrants is controlled not only by civilians, and migrants have become the prey of armed groups profiting from this new godsend. Tuareg rebel groups, members of the Coordination of Azawad Movements (CMA) which brings together various movements including the National Movement for the Liberation of Azawad (NMLA), the High Council for the Unity of Azawad (HCUA), a dissident wing of Ansar Dine, as well as the Arab Movement of Azawad (AMA), have engaged in the transportation of migrants, a lucrative business.

The traffic is perfectly organised. The recruitment of migrants often begins in the capital, Bamako, where Gao's main smugglers rely on intermediaries who intercept migrants at the bus station promising them a direct route to Algeria. Once they arrive in Gao, after travelling for days on a bus, often delayed by checkpoint stops during which they are regularly extorted for money, the migrants pass into the hands of coaxers and "ghetto chiefs", or lodgers. There are numerous accomplices: upon their arrival in Gao, migrants are regularly taxed by the Malian army, and those who cannot pay are arrested and taken to the police station, where agents themselves sometimes call the coaxers to hand them the migrants.

Trapped in Gao in the houses of coaxers who work for important Tuareg or Songhai smugglers, migrants can continue their journey only if they still have money or if they call their families. Migrants stay in Gao from as little as a few hours to as much as weeks or months, however long it takes to get the necessary amount of money. In 2018, the price of the journey from Gao to Algeria was 85,000 CFA francs (130 euros), although it could also be as high as 150,000 if not 200,000 CFA francs (230 to 300 euros).

The journey to the north starts from a second bus station outside Gao, a "craft station" or "traffic station", as migrants call it, from where trucks leave for Timbuktu, Kidal, or Algeria. Each truck transports between 50 and 100 candidates for exile. Other coaxers ferry migrants on pick-ups where no less than 30 people are crammed. The route across the desert is arduous and it lasts several days, sometimes more than a week, especially as the vehicles are stopped by armed men five to eight times before reaching the Algerian border, sometimes in the desert, or in villages, such as Tessalit, Kidal or Adjelhoc. At checkpoints, migrants are systematically extorted for money (between 1,500 and 2,500 CFA francs (2 to 4 euros) at each barrier), threatened, beaten or tortured. They are stripped of their clothes, phones, money, and jewels. Those who have no money are often beaten, maimed, or killed. Migrant women have also been victims of gang rape, in the middle of the desert or in the villages of Tessalit and Adjelhoc, sometimes in front of their children. Oftentimes, the armed men who stop the vehicles wear a uniform. At most checkpoints, the Azawad flag is hoisted, the symbol of the autonomous Tuareg territory; however, some migrants have been stopped also by an armed group led by a Pula. In this desert area in the grip of trafficking, especially of drugs, armed groups clash in fierce competition, particularly since the controls by the French forces of Operation Barkhane have targeted smuggled cigarettes and drugs (cannabis, tramadol) much more systematically. On the other hand, reports suggest that neither Barkhane forces nor those of the MINUSMA (United Nations Integrated Multidimensional Stabilization Mission in Mali) control the vehicles that transport migrants.

One of the routes to Algeria most frequently travelled by migrant smugglers stops off at the base of a Tuareg smuggler, Mahamadou Ag Rhissa, nicknamed by migrants Mohammed "Talandak", after the name of his village on the Algerian border, near Timiaouine. Numerous migrants have been smuggled by coaxers who work for this prominent businessman, a member of the High Council for the Unity of Azawad, upon whom the UN Security Council has imposed

sanctions since December 2018. He is accused of multiple actions: “the [illicit] production and trafficking of narcotic drugs and their precursors originating in or transiting through Mali, the trafficking in persons and the smuggling of migrants, the smuggling and trafficking of arms as well as the trafficking in cultural property.⁴⁰” In October 2017, Mohammed “Talhandak” was briefly arrested by the military forces of Operation Barkhane as part of the fight against networks of terrorist groups. The migrants who passed through the Talhandak “base” described the place in detail: three courtyards surrounded by watchtowers hosting up to 600 migrants. When they arrive, migrants have to call their families again to pay for them to cross the border, otherwise they are sold back to coaxers from different countries (Ivory Coast, Guinea), who make them cross the Algerian border by car and then on foot. Mohammed “Talhandak” is in contact with important intermediaries, including Baye Coulibaly⁴¹, affiliated with Ganda Koy, a local militia comprising predominantly ethnic Songhai, who traffics migrants using his travel agency Tinariwene⁴² as a front on behalf of Mohammed “Talhandak”.

According to the report by the UN Security Council Panel of Experts on Mali published in August 2019, Mohammed Ag Rhissa, whom the panel met, did not deny the existence of this base, but said that “migrants were not mistreated in his garage in Talhandak but were accommodated at a reasonable price of 1,000 Algerian dinars (\$8.50) per week.⁴³” He also claims to have stopped the smuggling of migrants.

On 28 April 2020, the members of the European Council again expressed their utmost concern “about the deterioration of the security and humanitarian situation in the Sahel region⁴⁴”. UN Secretary-General, Antonio Guterres, defines the situation in northern Mali as “complex” and “of great concern”,⁴⁵ while the report of the Secretary-General recalls that, despite the presence of Barkhane and MINUSMA military forces, “In Gao Region, a consistent infiltration of terrorist armed groups has been perceived, to a point where some interlocutors compared the situation to that in 2012.⁴⁶”

Yet, it is precisely in this area that due to the European migration policy, migrants are now led to transit. Contrary to what Europe often implies, migrants are aware of the risks: “When you start the journey, you must keep going, go straight ahead. It’s better than looking back. Going back is not an option”, said Suleiman, a young man from Guinea who passed through the Talhandak base. Some are no longer with us to give their testimony.

⁴⁰ - <https://www.un.org/securitycouncil/fr/content/mahamadou-ag-rhissa>

⁴¹ - <https://undocs.org/fr/S/2019/636> p. 36

⁴² - <https://undocs.org/fr/S/2019/137> P. 58

⁴³ - <https://undocs.org/fr/S/2019/636> p. 36

⁴⁴ - <https://www.consilium.europa.eu/fr/press/press-releases/2020/04/28/joint-declaration-of-the-members-of-the-european-council-with-the-member-states-of-the-g5-sahel/>

⁴⁵ - <http://www.opex360.com/2020/01/12/un-rapport-des-nations-unies-decrit-une-situation-de-plus-en-plus-complexe-et-preoccupante-au-mali/>

⁴⁶ - https://minusma.unmissions.org/sites/default/files/s_2019_983_f.pdf



4. AS IF NOTHING HAD HAPPENED: SUDAN'S TRANSITION AND THE EU MIGRATION POLICY

CLOTILDE WARIN - *Researcher* and JÉRÔME TUBIANA - *Researcher*

“The EU has suspended projects targeting illegal migration in Sudan”. The declaration⁴⁷ made in July 2019 sounded like a victory for many Sudanese who, for years, had been asking the EU to end organised with the dictatorship in power for thirty years. Starting in December 2018, those activists organized a series of demonstrations resulting in April in a coup that replaced the dictator Omar al-Bashir with a military council, followed by a murderous crackdown on protesters in June. The EU justified the suspension of the projects in July, as negotiations between military and civilian leaders for the establishment of a transitional government were still underway, merely by stating that the revolt would have jeopardized personnel safety and generated a lack of “government counterparts”. However, it is precisely the very nature of these interlocutors that has led to the EU being accused of supporting the Sudanese dictatorship.

Since the 2011 crisis in Libya, the Sudan-Libya axis has become the main route travelled by migrants from the Horn of Africa to the Mediterranean. Thus, with the launch of the “Khartoum Process” in 2014,⁴⁸ Khartoum became the capital of EU migration policy in the region. Established in 2015, the EU Trust Fund for Africa allocated €160 million to Sudan for a variety of projects, including the two regional projects allegedly suspended in 2019, designed to train the Sudanese border police⁴⁹ and establish a regional intelligence exchange centre in Khartoum.⁵⁰ In 2016, the partnership was strengthened with a “High Level Dialogue on Migration” between the EU and Sudan.

The partnership with the EU not only allows the regime to obscure the wars it wages in Sudan’s peripheries, conflicts that have generated millions of displaced people, but also to exploit the migration issue to put pressure on the EU. Moreover, as admitted by an EU project officer stationed in Khartoum in 2018, even if European funding does not represent much “given Sudan’s huge security spending, the economic situation is so disastrous that 160 million euros count up to the last cent.”

In response to EU demands, Khartoum chose to deploy several thousand men of its Rapid Support Forces (RSF) along its borders with Libya and Egypt. Established in 2013, this paramilitary corps brings together, under an official name, the Arab *janjaweed* militias armed

⁴⁷ - More specifically Deutsche Welle, quoting an EU spokesperson. See <https://www.dw.com/en/eu-suspends-migration-control-projects-in-sudan-amid-repression-fears/a-49701408>

⁴⁸ - See <https://www.arci.it/documento/la-relazione-dangereuse-entre-migration-developpement-et-securite-pour-externaliser-les-frontieres-en-afrique/>

⁴⁹ - Better Migration Management (BMM) Programme. See. https://ec.europa.eu/europeaid/sites/devco/files/bmm-sudan-concept-note_en.pdf

⁵⁰ - Regional Operational Centre in Khartoum (ROCK) Project.

See https://ec.europa.eu/trustfundforafrica/sites/eueta/files/factsheet_eu_development_cooperation_with_sudan.pdf

by Khartoum to wage war in Darfur since 2003.⁵¹ Migrants stopped by the RSF on their way to Libya report having been the victim of violence at the hands of militiamen: men are systematically beaten, women raped, some were forced to work, sometimes for several months. Some of these prisoners were shown on Sudanese television by RSF officers claiming to act as border guards on behalf of Europe. But others report that those who pay a bribe to the militiamen are released and can thus continue their journey.⁵² The convoys of smugglers who pay bribes to the RSF have nothing to fear.

The deployment of RSFs on the routes to Libya allows them not only to tax smugglers and migrants, but also to transport or escort migrants themselves. Since 2018, we have interviewed several dozen migrants in Libya and Europe coming from the Horn of Africa, who report having been taken to Libya aboard RSF military pick-ups, or on lorries escorted by the RSF.⁵³ “In principle, we have orders to block all migrants”, explains an RSF member. “But we only stop those who don’t have any money and send them back to Khartoum to show the government that we are fighting migration. The others, we tax them before we let them leave. Some RSF members also transport migrants to Libya: they have become smugglers.” Since the beginning of 2016, when the first contingent of RSF was deployed in the area, the militiamen have been transporting migrants from Sudan to Libya. In 2017, they apparently established an actual monopoly of migrant transportation between the two countries.

Many migrants now travel on the back of RSF pick-ups (carrying 10 to 35 passengers), organised in convoys of up to 16 vehicles. Some travel aboard lorries (between 60 and 140 migrants in each vehicle, often in convoys of up to 5 lorries), escorted by RSF pick-ups mounted with machine guns. The vehicles of civilian smugglers refusing to gang up with the RSF are blocked. “The route between Darfur and al-Kufra is almost exclusively reserved for the RSF,” explains a smuggler. Many abandon the Sudanese routes and prefer travelling through Chad, away from the RSF.⁵⁴

Migrants can board the RSF vehicles even without paying, as they will later be sold by the RSF to Libyan traffickers, who will collect payment for past and future journeys, often torturing them until they convince their families to transfer the money.⁵⁵

Since the “revolution” of December 2018, the RSF have apparently been less active on migration routes. Many of them have been deployed to Khartoum to protect the regime. However, their leader, Mohamed Hamdan Daglo “Hemetti”, played a crucial role in the overthrow of dictator Omar al-Bashīr, thus becoming vice-president of the Sovereign Council leading the transition. A rival of the army, he currently needs his troops in the capital to stay in power. But he is also seeking European support, which explains why in June 2019 Hemetti once again declared to “protect Europeans from the influx of millions of illegal migrants [...]. We are working on behalf of Europeans, we guarantee their national security”⁵⁶. In September 2019, the RSF announced that they had blocked 18 vehicles carrying 138 migrants.⁵⁷

Since 2016, the EU, embarrassed by the fact that the RSF present themselves as its proxies, has repeatedly stressed that no EU funds have been allocated to paramilitaries and that the

⁵¹ - See <http://www.smallarmssurveysudan.org/fileadmin/docs/issue-briefs/HSBA-IB-27-Sudanese-paramilitary-forces.pdf>

⁵² - See Green, Skye. 2019. *The RSF Empire: An In-depth Analysis into the Rapid Support Forces of Sudan*. Confidential Report.

⁵³ - See <https://www.clingendael.org/sites/default/files/2018-09/multilateral-damage.pdf>

⁵⁴ - See https://www.clingendael.org/sites/default/files/2018-12/caught-in-the-middle_0.pdf

⁵⁵ - See <https://www.clingendael.org/sites/default/files/2018-09/multilateral-damage.pdf>

⁵⁶ - See <https://www.middleeasteye.net/news/eu-accused-hiding-links-sudan-armed-groups-migration-funding>

⁵⁷ - See <https://suna-sd.net/en/single?id=412667>;

https://www.infomigrants.net/fr/post/19795/soudan-les-milices-janjawid-garde-frontieres-ou-passeurs?ref=tw_i

partnership with the Sudanese government is limited to “police forces”. But this is not less problematic: the Sudanese police, which have also integrated Janjaweed into their ranks, are renowned for their brutality.

Interviewed in 2018, an EU official in Khartoum dismissed a number of criticisms, claiming in particular that the RSF, which had just been transformed into a regular force by an amendment to the Constitution, would no longer be as disreputable as in the past.⁵⁸ He also pointed out that the links between the EU and the Sudanese regime were limited by the fact that all funding “goes through agencies” of EU Member States, including the German Development Agency (GIZ) or the security firm Civipol, controlled by the French Ministry of Interior. Although this subcontracting system allows the EU to dilute its responsibility, the same official complained that the EU had long lacked information on how some of the EU funds are used.⁵⁹ However, the announcement of the suspension of the projects in July 2019 does not seem to indicate any increase in awareness. In fact, according to several EU officials, the announcement is inaccurate: the projects have never been suspended. The ROCK regional centre project was simply relocated to Nairobi (Kenya) between June and September 2019.⁶⁰ “Better Migration Management” activities,⁶¹ which include training of Sudanese forces, were simply “delayed or postponed” during “the peak of the humanitarian crisis in Sudan (May-June 2019)”, a peculiar euphemism used by the EU to define a crackdown that resulted in approximately 200 deaths.

Everything indicates that the EU’s externalisation policy in Sudan will continue, although the ongoing transition makes it more uncertain. In Europe, some fear that a democratic Sudan will prove unable to control its borders, and may be tempted to support a return to power for the military in Sudan. But the democratic transition and the appointment of civilian ministers also allow the EU to show more acceptable partners and thus justify its partnership with Sudan on migration. Several Member States have also carried out deportations in collaboration with the Sudanese intelligence services, in breach of applicable legislation. The transition also risks allowing more rejections of Sudanese asylum applications and justifying the deportation of rejected asylum seekers.

⁵⁸ - The same official then considered that Sudan [was] far from being the country that least respects human rights. He also described as inevitable the risk, often highlighted, that civilian equipment (vehicles, for example) may be used for repression: «Even a pen could become a weapon, if you stuck it in an ear!».

⁵⁹ - «At the beginning of 2017, we didn’t know how the BMM money (Better Migration Management Programme) was being used, but since then we have had access to information. We wanted to keep an eye on project management».

⁶⁰ - ROCK operations may also be transferred to a similar project, at continental level, under the umbrella of the African Union, thus creating another layer of subcontracting.

⁶¹ - The second phase of the Better Migration Management (BMM) Programme started in October 2019. Other delays are attributed to the COVID-19 crisis.



MFF 2021-2027 NEGOTIATIONS - MIGRATION FUNDING

€ billion, 2018 prices, EU-27	2014-2020 ¹	Commission proposal May 2018 ²	EP Resolution 10.10.2019 ³	Negobox 5.12.2019 ⁴	Compromise proposal 14.02.2020	Commission proposal May 2020 ⁵	European Council 2020 + Compromise 10.11.2020 ⁶
TOT MFF	1 082,6 1.16% RNL UE-27 (1,03% RNL UE-28)	1 134,583 1.11% RNL UE-27	1 324,089 1,3% RNL UE-27	1 087,0 1,07% RNL UE-27	1 094,827 1,074% dell'RNL UE a 27	1 850,0 (1 100+750 NGEU)	1 824,3 (1 074,3 + 750 NGEU)
Heading 4 Migration and border management	10.1	30.8	32.2	23.4	21.9	31.1	22.7
Asylum and Migration Fund (AMF)	6.7	9.2	9.2	9.2	8.7	11	8.7
Integrated Border Management Fund (IBMF)	2.7	8.2	8.2	5.5	5.5	11	5.5 + 1
Asylum and migration agencies (EASO)	0.435	0.768	1.1	n.d.	n.d.	1.1	n.d.
Border management agencies (EBCG, EU-Lisa)	2.7	10.6 (EBCG 9,1)	11.6	n.d. (EBCG 6.1)	n.d. (EBCG 5.1)	6,7	n.d. (EBCG 5.1 + 0.5)
Heading 5 Security and Defence	1.9	24.3	24.6	14.7	14.3	29.1 (19.4 + 9.7 NGEU)	13.2
Internal Security Fund (ISF)	1.2	2.2	2.2	1.7	1.7	2.2	1.7
Heading 6 Neighborho- od and the World	66	108.9	113.4	103.2	101.9	118.2 (102.7 + 15.5 NGEU)	98.4
Neighborhood, Develop- ment and International Cooperation Instrument (NDICI)	71.7	79.2	82.7	75.5	75.5	85.9 (75.5 + 10.4 NGEU)	70.8 + 1

¹ <http://www.senato.it/service/PDF/PDFServer/BGT/01155229.pdf>

² https://ec.europa.eu/commission/sites/beta-political/files/communication-modern-budget-may2018_en.pdf;

³ https://www.europarl.europa.eu/doceo/document/TA-9-2019-0032_IT.html e https://www.europarl.europa.eu/doceo/document/TA-8-2018-0449_IT.html#title2

⁴ https://www.consilium.europa.eu/media/41632/mff-negotiating-box_presidency.pdf

⁵ https://ec.europa.eu/info/sites/info/files/about_the_european_commission/eu_budget/1_en_act_part1_v9.pdf

⁶ <https://www.consilium.europa.eu/media/45118/210720-euco-final-conclusions-it.pdf>; https://twitter.com/EP_Budgets/status/1326217994620588033/photo/1

Sara Prestianni is a specialist in international migration and asylum policies. Since 2003 her work of investigation, photography and geopolitical analysis has focused on the Mediterranean and Sahel region with missions at internal and external borders. Since March 2020 she is the migration and asylum programme officer at EuroMed Rights network.

Clotilde Warin is a researcher and journalist specializing in migration issues for the *Clingendael Institute and Confrontations Europe* (a Paris think tank), where she is also editor-in-chief of the quarterly review. She has published various articles in the French media, and in the *London Review of Books and Foreign Policy*.

Jérôme Tubiana is currently the director of the *Africa Desk at the International Federation for Human Rights* (FIDH). Prior to this, he worked for twenty years as a researcher for various organisations, focusing on conflicts and migration in particular in Sudan, Chad, Niger and Libya.

Giorgia Jana Pintus has worked on ARCI's *Externalization Policies Watch III* project since September 2019. She specialises in the international protection of human rights and EU migration policy. Before that she collaborated with NGOs in the field of asylum in Italy and abroad.

FUNDING THE BORDER

funds and strategies to stop migration

Report edited by GIORGIA JANA PINTUS.

Photos: SARA PRESTIANNI.

Graphic Project: CLAUDIA RANZANI

Translation: SARA MESERVEY

This report has been produced within the framework
of the *#externalisationpolicieswatch* project
supported by Open Society Foundations.

