

# TURNING THE TIDE IN THE MEDITERRANEAN

## SMART TOOLS FOR EFFECTIVE EU MIGRATION MANAGEMENT

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### SUMMARY

*"Migration is a megatrend of our time"*<sup>2</sup> and the EU has to upgrade its migration governance and management architecture to effectively address this challenge. Despite the significant focus on migration control, over 117,000 migrants had arrived in Europe via the Central Mediterranean Migration Route by 5 December 2017.

The EU disincentivises third country cooperation in its migration governance architecture through its strong focus on fighting irregular migration and human trafficking. This is amplified by Member states' failure to provide legal migration channels and financial incentives to offset some of the financial burden of tighter migration management. Unless the EU is able to fill these gaps, human rights questions are likely to further harm the EU's soft power vis-à-vis third countries.

Similarly, the EU's migration management approach fails to appreciate the roots of irregular migration and neglects the nexus between security and development in addressing smuggling networks. Unless migrants and local communities involved in smuggling are provided with positive alternatives, irregular migration to Europe will continue. Returning migrants will not solve the issue in the long term unless the root causes of irregular migration are addressed.

The EU should live up to its own rhetoric and commit to the full spectrum of its migration governance and management architecture if it wants to stay in the driver's seat. For this purpose, it has to:

- Address the migration-security-development nexus through swap programmes for fishermen and other participatory livelihood schemes for smuggling communities in combination with programming outlined under the Palermo Protocol;
- Establish positive alternatives for irregular migration through demand-driven labour migration, an 'Erasmus Pro Mundus' programme for vocational training, and better capacities for local development through innovation labs;
- Upgrade and streamline EU and Member state voluntary return and reintegration programming by ensuring that every returned migrants and their communities receive effective and sustainable reintegration support, including through innovative cash transfer;
- Ensure adequate funding for resource-intensive migration management projects by increasing the share of the EU budget dedicated to migration as well as through new funding mechanisms.

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## INTRODUCTION

**M**igration is the uncontested buzzword of present-day European political discourse. Since 2015, the topic has topped the agenda of the European Union (EU) and its Member states and is being perceived as one of the top two challenges by the public<sup>1</sup>. After wielding massive influence on election outcomes across the continent, calls for increased internal security have shifted the mainstream political discourse to the right. For instance, this is likely to have an impact on the May 2018 general elections in Italy, where calls for more European solidarity on migration have been unanswered for a decade.

With the closure of the Balkan Route, the general perception has taken root that the migration crisis is over. While arrivals via Eastern Europe have indeed largely ceased, irregular migrants continue to arrive in large numbers on Southern European shores. From 1 January to 5 December 2017, over 117,000 migrants from Africa, the Middle East, and beyond, entered the European Union irregularly via the Central Mediterranean Migration Route<sup>2</sup>, which crosses Egypt and Libya for transit towards Italy and Europe. Libya accounts for 90%, and thus the majority, of departures from North Africa, followed by Egypt with over 7%<sup>3</sup>.

Current arrival figures are impressive even when compared to peak years in 2015 and 2016, but they are consistent with the trend of arrivals via the Central Mediterranean Migration Route over the past decade. Therefore, we are not so much faced with a 'crisis', but rather with an enduring challenge that requires sustainable answers going beyond the status quo. With over 3,000 migrants having lost their lives in the Mediterranean this year alone and amid persistent arrivals figures, the EU and third country partners need to find a joint approach to address the complex nature of migratory flows.

The New York Declaration for Refugees and Migration<sup>4</sup>, adopted in September 2016, has created an unprecedented momentum to strengthen migration governance around the globe. Annex II of the Declaration initiated a process of intergovernmental consultations and negotiations aimed at the adoption of a binding international treaty – a global compact on migration and refugees. In anticipation of the negotiations on the global compacts in Spring 2018 and amid continuous massive flows of migrants, the EU and its Member states should re-evaluate the external dimension of their migration policy.

The following analysis will assess the EU's policy responses directed towards improving the management of migration via the Central Mediterranean Migration Route. Libya and Egypt, as the main transit gateways, will be used as key reference points to assess the impact of EU migration policies and operational responses. The first part concentrates on the EU's external migration architecture and demonstrates that the focus on the fight against irregular migration and human trafficking has created three persistent challenges. The second part turns to the EU's operational challenges in the fight against smuggling networks. Subsequently, three key policy recommendations are outlined with a view to strengthening the effectiveness of EU migration governance and management.

## 1. The EU's migration governance architecture: three central challenges

During the High Level Conference on Migration Management in June 2017, Federica Mogherini attested that *"migration is a global phenomenon that requires coordinated external action by the European Union"*<sup>5</sup>. The phenomenon she described is far from new. Mixed migratory flows crossing the Central Mediterranean Migration Route towards Europe have been part of the European migration profile for the past few decades. The EU has responded by constructing a complex migration governance architecture. Its centrepiece is the 2005 Global

1. European Commission, "Eurobarometer Interactive: The two most important issues facing the EU at the moment", retrieved on 17 November 2017.

2. IOM, "Mediterranean Update 5 December 2017".

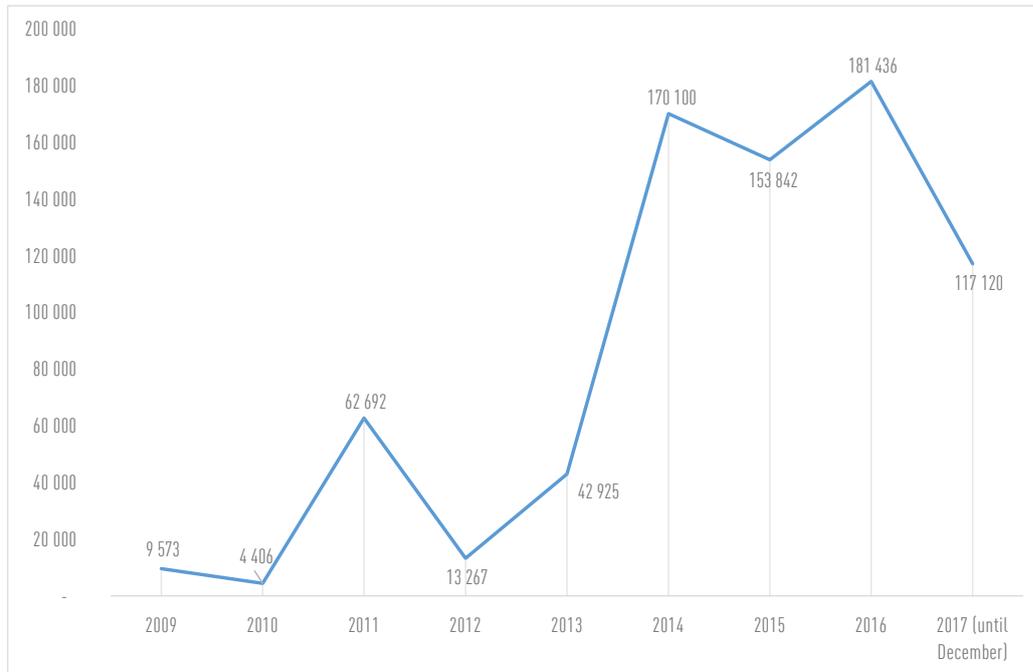
3. Council of the European Union, "Migration on the Central Mediterranean route: managing flows, saving lives", Brussels, 27 January 2017.

4. United Nations, "New York Declaration for Refugees and Migration", Resolution 71/1, adopted by the General Assembly on 19 September 2016.

5. European Council, Extracts from the opening speech by Federica Mogherini, EU High Representative for Foreign Affairs and Security Policy, at the High Level conference on Migration management", 21 June 2017.

Approach to Migration and Mobility (GAMM), which aims “to address all relevant aspects of migration in a balanced and comprehensive way, in partnership with non-EU countries”<sup>6</sup>. The GAMM builds on four pillars that cut across various EU policy areas: (1) legal migration; (2) irregular migration & human trafficking; (3) migration for development; and (4) protection<sup>7</sup>.

FIGURE 1 ► Maritime arrival figures to Italy



Source: Government of Italy

The GAMM has been criticised on several accounts. It has been rather ineffective in managing migratory flows into the EU, despite them being smaller in scale for most of its existence<sup>8</sup>. Policymakers were able to disregard the GAMM’s flaws until 2015, when high numbers of irregular arrivals and large-scale tragedies in the Mediterranean suddenly induced the EU to rethink migration, both with regard to Schengen and to the GAMM. Starting with the Special European Council meeting on 23 April 2015, EU migration management entered crisis mode and migration was prioritised across key policy areas.

What were the effects of this crisis response mode on the modus operandi and effectiveness of the EU’s external migration governance? Further on, we will show how the EU’s crisis mode affected two of the GAMM’s key external migration governance instruments: interregional policy dialogues and partnerships with key transit countries along the Central Mediterranean Migration Route, with a special focus on Libya and Egypt.

## 1.1. Overemphasis on the fight against irregular migration

The EU crisis response mode has overemphasised the fight against irregular migration and trafficking under interregional dialogues and bilateral partnerships.

The main dialogue framework for the Central Mediterranean Migration Route, complementing the Rabat Process, is the *EU-Horn of Africa Migration Route Initiative (Khartoum Process)*, established under the Italian Presidency of the European Council on 28 November 2014. From the beginning, the Khartoum Process was characterised by the prioritisation of the fight against irregular migration, which was the focus of six of the ten action points of its founding declaration. Prevention, root causes, return and reception remain subordinated<sup>9</sup>.

6. European Commission, “Communication on the Global Approach to Migration and Mobility”, 2005

7. European Commission, “Global Approach to Migration and Mobility”, retrieved on 8 November 2017

8. Koenig, Nicole, “The EU’s external migration policy: towards win-win-win partnerships”, Jacques Delors Institut, No. 190, 6 April 2017.

9. Stern, Maximilian, “The Khartoum Process: Critical Assessment and Policy Recommendations”, IAI Working Papers 15, 49, December 2015

The EU's emergency response mode fully kicked in at the first Steering Committee meeting of the Khartoum Process. The body is tasked with operationalizing the initiative, including through concrete project proposals funded by the EU in third countries. Taking place on the day of the Special European Council meeting of 23 April 2015<sup>10</sup>, discussions focused heavily on the fight against human trafficking and the smuggling of migrants through North Africa towards the Northern Mediterranean. This shifted the burden of managing mixed migratory flows towards transit countries by emphasizing their responsibility to better prevent the movement of people across the Mediterranean.

The EU's bilateral relations are equally marked by a significant emphasis on the fight against irregular migration. In response to the mass arrival of migrants on European shores, the Commission announced the Migration Partnership Framework in June 2016. The framework was designed to enable 'tailor-made' bilateral partnerships on migration<sup>11</sup>. Although the document calls for balanced partnerships, three central EU objectives are clearly spelled out: reducing the loss of life, increasing returns, and preventing irregular migration.

Modelled on the EU-Turkey migration deal, the Partnership Framework guides the EU's cooperation with Libya, which is currently absent from Khartoum Process negotiations in light of the ongoing governance crisis. On 3 February 2017, the European Council adopted the Malta Declaration, which endorsed the EU Commission Communication of January 2017 as well as the Italian Memorandum of Understanding<sup>12</sup>. The Declaration affirms the EU's support for Italy's bilateral efforts with the Libyan Government of National Accord to curb the flows of irregular migrants across the Mediterranean. Both the Declaration and the Italian Memorandum emphasise the reduction of irregular migration flows through operational support for the Libyan Coast Guard, as well as more surveillance and search and rescue. The protection of irregular migrants is mainly channelled through the voluntary return of migrants as well as support for detention and reception facilities. Only vague references are made to alternative livelihoods for communities involved in the smuggling of migrants<sup>13</sup>.

The EU acknowledges that *"the overall relationship between the EU and [third countries] will be guided in particular by the ability and willingness of the country to cooperate on migration management"*.<sup>14</sup> Both the Khartoum Process and bilateral partnerships heavily focus on security cooperation in the fight against irregular migration and human trafficking. Evidence, however, suggests that the incentives for cooperation are insufficient for partners to proactively stem the burden of migration management<sup>15</sup>. This is exemplified by the fact that not a single project from the Khartoum Process could be presented during the Valetta Summit on Migration.

## 1.2. The unfulfilled promise of legal migration avenues

The underdeveloped nature of legal migration avenues is a key inhibitor for third party cooperation under GAMM instruments<sup>16</sup>. Legal migration is often used interchangeably with 'mobility' in EU policy language but without a clear definition. The bottom line is that legal migration and mobility are mostly linked to Member state visa policy.

Labour migration channels are the most prominent tool and the EU itself provides EU Blue Cards and Scientific Visas for highly skilled workers and researchers respectively. In addition, circular migration for seasonal work or other forms of employment are made possible by Member states and are considered to be an effective tool to address temporary labour shortages while incentivizing legal migration. Member states have been encouraged to facilitate this type of access to the EU through various policy documents, including through the GAMM and the European Pact on Immigration and Asylum of October 2008. This was also reiterated by the Mobility Partnerships Frameworks, which raises the prospect of more legal migration channels if third countries strengthen the overall management of migratory flows<sup>17</sup>. Finally, humanitarian resettlements have been

10. IOM, "Khartoum Process meeting agrees concrete action is needed to save lives in the Mediterranean Sea", retrieved on 10 November 2017

11. European Commission, "Communication on establishing a New Partnership Framework", Brussels, 7 June 2016

12. European Council, "Malta Declaration by the members of the European Council on the external aspects of migration: addressing the Central Mediterranean route", 3 February 2017, European Council, 3 February 2017

13. Koenig, Nicole, "The EU's external migration policy: towards win-win-win partnerships", Jacques Delors Institut, No. 190, 6 April 2017.

14. European Commission, "Communication on establishing a New Partnership Framework", Brussels, 7 June 2016, p.6.

15. Ibid.

16. García Andrade, Paula and Martín, Iván, "EU Cooperation with third countries in the field of migration", Study for the European Parliament, LIBE Committee, October 2015.

17. Weinar, Agnieszka, "Mobility Partnerships – what impact do they have on legal migration and mobility?", Migration Policy Center, 16 November 2017

available under the EU scheme since July 2015, which could be further strengthened through the establishment of a permanent EU Resettlement Framework as proposed by the Commission in July 2016<sup>18</sup>.

In the context of interregional dialogues, the EU offers little in terms of legal migration avenues. The founding declaration and subsequent documents of the Khartoum Process do not refer to legal migration channels. The Egyptian Government and other participating third countries have not been shy about highlighting this shortcoming during the relevant negotiations. However, their calls have not been addressed.

Similarly, the Commission Communication from 7 June 2016 refers to legal migration pathways only in vague terms under its migration partnerships, calling upon Member states “to show that legal pathways exist”<sup>19</sup>. No concrete proposals are put forward. Instead, the European Council stresses that “*cooperation on readmission and return will be a key test*” for migration partnerships<sup>20</sup>. In addition, the EU lays out a carrot-and-stick approach (i.e. positive and negative incentives) to influence third countries’ willingness to cooperate<sup>21</sup>.

However, what does this imply? The emphasis on the number of returns may be a legitimate objective but cannot be a benchmark for third country cooperation. Reportedly, rates of return are low as a result of slow procedures and administrative hurdles inside the EU<sup>22</sup>. In other cases, readmission and return arrangements are controversial due to security concerns and may come at a considerable political cost. This was the case with the EU-Turkey<sup>23</sup> deal, which resulted in the EU’s diplomatic power being muted during the oppression of the Turkish opposition in order to uphold the readmission deal.

” WITHOUT SERIOUS IMMIGRATION AVENUES, COUNTRIES WILL HAVE LITTLE INCENTIVE TO COOPERATE. ”

Unless the EU gets serious about more legal migration avenues, countries will have little incentive to cooperate in migration management. Even under the Mobility Partnership Framework, it is questionable whether the creation of legal migration pathways will bear fruit. While third country expectations for increased mobility were evidently high, mobility partnerships rely on Member state contributions to facilitate legal migration. To date, Member states have mainly repackaged existing bilateral migration schemes and failed to provide new avenues for legal migration<sup>24</sup>. In order to avoid references

to ‘immobility partnerships’<sup>25</sup>, the EU needs to leverage commitment from its Members States to make this instrument effective. Considering the EU’s previous track record in delivering on mobility incentives, third countries will have little faith in the EU delivering.

The EU’s poor record in delivering on legal migration promises also informs third country calculation in the reoccurring debate on the establishment of hotspots in transit countries. As analysed by Marie Walter-Franke, third countries perceive hotspots as potential ‘catch basins’ for migrants<sup>26</sup>. Egypt has made it very clear to the EU that such hotspots are out of the question. Unless the EU and its Member states take serious steps to increase resettlements and legal migration avenues, third countries will not trust the EU’s commitment to cooperating.

### 1.3. Financial incentives – a drop in the ocean

The current EU migration governance architecture disregards the financial burden of third countries in strengthening migration control. Preventing irregular departures from North Africa would mean that large numbers of migrants would strand in transit, putting the financial and administrative burden of reception and protection on third country partners<sup>27</sup>. This would augment the negative impact of the prolonged economic

” CURRENT EU MIGRATION GOVERNANCE DISREGARDS FINANCIAL BURDENS FROM MIGRATION CONTROL ON THIRD COUNTRIES. ”

18. European Commission, “Enhancing legal channels: Commission proposes to create common EU Resettlement Framework”, 13 July 2016

19. European Commission, “Communication on establishing a New Partnership Framework”, Brussels, 7 June 2016, p.5.

20. European Council, “Conclusions”, 28 June 2016.

21. Lehne, Stefan, “Upgrading the EU’s migration partnerships”, Carnegie Europe, November 2016

22. Weinar, Agnieszka, “Mobility Partnerships – what impact do they have on legal migration and mobility?”, Migration Policy Center, 16 November 2017

23. Koenig, Nicole, “The EU’s external migration policy: towards win-win-win partnerships”, Jacques Delors Institut, No. 190, 6 April 2017.

24. Weinar, Agnieszka, “Mobility Partnerships – what impact do they have on legal migration and mobility?”, Migration Policy Center, 16 November 2017

25. Ibid.

26. Walter-Franke, Marie, “External EU hotspots: why the cat keeps coming back”, Delors Institut Blog Post, 29 September 2017

27. Stern, Maximilian, “The Khartoum Process: Critical Assessment and Policy Recommendations”, IAI Working Papers 15, 49, December 2015

recessions and challenges to political stability prevalent in many African partner countries. Upgrading border control through technology and personnel also comes at a significant direct cost to third country governments amid limited improvements in migration control.

Egypt, for example, has suffered from slow economic recovery since the 2011 uprising, and therefore has little or no interest in hosting more irregular migrants. With several million irregular migrants on its territory, irregular migration out of Egypt effectively alleviates the burden on its already strained labour market. Similarly, Libya already hosts large numbers of migrants – foreign workers, migrants in transit and detention – that divert much-needed human and financial resources from national agencies. These resources would otherwise be available to alleviate strained national governance structures.

Most importantly, controlling outward migration would also harm some of the world's largest recipients of remittances. For the Global South, remittances are an important source of foreign currency and major contributor to GDP. The World Bank estimates remittance payments will exceed \$440 billion (approx. €370 billion) in 2017, larger than the global sum of Official Development Assistance<sup>28</sup>. Stronger migration control would therefore harm a central and relatively stable factor contributing to developing economies. This further augments the uneven distribution of risks and benefits between the EU and its partners.

To offset some of the financial burden of stronger migration management, the Commission announced it would mobilise €8 billion to support bilateral partnerships until 2020. However, this will mainly be pursued by redirecting existing development envelopes<sup>29</sup>, and far from matches the financial costs stemmed by third countries along the Central Mediterranean Route. In addition, the EU Emergency Trust Fund (EUTF) for Africa was established to address root causes of migration in Africa. The Fund pools €1.8 billion from existing EU envelopes combined with €1.8 billion from the Member state<sup>30</sup>.

The EU seemingly follows a more comprehensive approach under the EUTF by striking a balance between emergency response, development interventions and the protection of migrants alike<sup>31</sup>. In the short term, projects contribute to life-saving interventions along major migratory routes, to increase the rate of returns, as well as to prevent irregular migration through information campaigns. In the long term, proposed projects aim to address the root causes of irregular migration and to foster sustainable development, thereby stabilizing communities of origin.

However, the Fund remains considerably under-resourced to date, as it mirrors the structural flaws characterizing the GAMM. By 11 September 2017, only 10% of the pledged contributions had been transferred to the Fund, which was set up in 2015<sup>32</sup>. In response, Commission President Jean-Claude Juncker reprehended heads of state for “shedding crocodile tears” over Africa<sup>33</sup>.

Even if resourced as intended, the Fund would be anything but financially robust when looking at the magnitude of issues it is supposed to address. Dealing with the ‘root causes’ of migration and displacement means establishing security and good governance in regions of conflict, while generating employment for millions of people. For the former, concerted political action is required; for the latter, the €2 billion that have been approved for 117 projects under the EUTF to date are largely insufficient<sup>34</sup>. This was acknowledged by African diplomats at the Valetta Summit, and one reportedly affirmed to state leaders that “if you really want a significant cut in migration [the EU] must give us some [serious] money”<sup>35</sup>.

A noteworthy proposal was brought forward by the European Commission in the form of an External Investment Plan to address root causes of migration. Devised along the lines of the Juncker Plan for Europe, it aims to mobilise private sector investment of up to €62 billion through guarantees by the EU and Member states<sup>36</sup>. This

28. World Bank, “Remittances to Developing Countries Decline for Second Consecutive Year”, 21 April 2017

29. Weinar, Agnieszka, “Mobility Partnerships – what impact do they have on legal migration and mobility?”, Migration Policy Center, retrieved on 16 November 2017

30. European Commission, “Emergency Trust Fund for stability and addressing root causes of irregular migration and displaced persons in Africa”, Brussels, 20 October 2015.

31. Koenig, Nicole, “The EU’s external migration policy: towards win-win-win partnerships”, Jacques Delors Institute, No. 190, 6 April 2017.

32. European Commission, “EU MS and other donor’s pledges and contributions”

33. Rankin, Jennifer, “\$2bn EU-Africa ‘anti-migration’ fund too opaque, say critics”, 31 October 2017

34. European Commission, “Communication on the delivery of the European Agenda on Migration”, Brussels, 27 September 2017

35. Ibid.

36. European Commission, “Communication on establishing a New Partnership Framework”, Brussels, 7 June 2016

funding mechanism has the potential to direct much-needed financial resources to private sector initiatives in third countries in a more cost-effective manner than traditional development aid.

For the Plan to be implementable, the EU needs to leverage €3.1 billion in Member state guarantees<sup>37</sup>. Whether this is currently feasible is equally questionable. The Plan also presupposes that the private sector would indeed be willing to invest such large amounts of money despite a risky investment climate in African partner countries. While Egypt would certainly be a prime candidate considering its bold economic reform programme<sup>38</sup>, other more important sending countries, such as Sudan and Eritrea, do not have an attractive investment landscape for European companies. Finally, negative impacts need to be avoided in line with the “do no harm” principle, including the risk that private sector investment may distort local markets.

Conceptually, the External Investment Plan is a powerful instrument to complement traditional EU development policy instruments. However, even combined with the Trust Fund and further initiatives, it is a drop in the ocean compared to the annual contributions of remittances to the GDPs of partner countries. Whether third country partners trust the EU’s ability to effectively implement this carrot also remains to be seen. For third country partners on the other side of the Mediterranean, more needs to be done to incentivise cooperation on migration management.

## 1.4. Adverse effects on human rights

The emphasis on the fight against irregular migration and trafficking in persons under the GAMM has mixed impact on human rights standards. African Khartoum Process members, such as Egypt, Eritrea and Sudan, maintain poor human rights records. Cooperation on migration management may indeed bring about positive changes to the human rights situations of migrants in these countries. In many cases, however, the record is mixed.

The Khartoum Process provides an important forum for partner countries to present national advances and to create synergies with other states. Egypt, for example, was able to showcase that it was the first country in the region to pass a counter-smuggling law in November 2016. The law safeguards the rights of migrants in line with international standards<sup>39</sup> and the country has made important progress in its migration policy architecture<sup>40</sup>. However, the implementation of protection policies remains weak amid an omnipotent security apparatus. In addition, the Egyptian military has repeatedly killed migrants in border areas<sup>41</sup> and the conditions for migrants in Egyptian detention centres warrants the attention of international organisations. Whether or not the legal advances will result in a change on the ground therefore remains to be seen.

Similarly, migration partnerships have a questionable impact on migrants’ rights in light of the focus on fighting irregular migration. Libya is the most obvious example. The main element of EU-Libya cooperation is the fight against irregular migration, through support for the Libyan Coast Guard and assistance to reception facilities. The expectation that the Coast Guard will prevent departures and intercept at sea is clear.

Evidence points to ample human rights abuses by actors inside Libya, including by the Coast Guards and the Department for Combatting Illegal Migration – the EU’s main partner agencies. Migrants are reportedly placed at severe risk during search and rescue operations conducted by coastguards, and in other cases agencies have directly shot at or sunk migrant boats<sup>42</sup>. Upon reception, “executions, torture and deprivation of food, water and access to sanitation” at the hand of the Libyan agencies were reported by a UN panel of experts in June 2017<sup>43</sup>. While IOM and UNHCR access to reception and detention centres is limited, German diplomats have compared the situation to those in concentration camps<sup>44</sup>.

To make matters worse, in April 2017 the IOM released information about ‘slave markets’, where sub-Saharan migrants are bought and sold by Libyans<sup>45</sup>. In November 2017, the European and African Union finally agreed

37. Ibid.

38. International Monetary Fund, “Transcript of Press Briefing on Egypt’s Economic Reform Program Review”, 27 September 2017.

39. IOM, “Egypt Passes New Anti-Human Smuggling Law”, 18 November 2016, retrieved from <https://www.iom.int/news/egypt-passes-new-anti-human-smuggling-law-0>

40. IOM, “Egypt Launches New National Strategy on Combating Illegal Migration”, 17 October 2016.

41. BBC, “Egypt border guards shoot Sudanese migrants dead”, 23 November 2015.

42. Amnesty International, “Central Mediterranean: Death toll soars as EU turns its back on refugees and migrants”, 6 July 2017

43. UN Security Council, “Final report of the Panel of Experts on Libya established pursuant to resolution 1973 (2011)”, 1 June 2017, p.21

44. Dearden, Lizzie, “EU Malta summit: Leaders warned against stranding thousands of refugees in ‘concentration camps’ in Libya deal”, Independent, 3 February 2017.

45. IOM, “IOM Learns of ‘Slave Market’ Conditions Endangering Migrants in North Africa”, 11 April 2017

on the development of an Action Plan to evacuate migrants from the conflict-ridden country during a summit in the Ivory Coast<sup>46</sup>. While the scope of the Action Plan is yet to be defined, it is questionable how Member states plan on evacuating vulnerable migrants from camps and from the hands of traffickers.

” THE EU GIVES PRIORITY TO THE FIGHT AGAINST IRREGULAR MIGRATION OVER THE PROTECTION OF MIGRANTS AND ADHERENCE TO INTERNATIONAL HUMAN RIGHTS STANDARDS.”

The EU gives priority to the fight against irregular migration over the protection of migrants and adherence to international human rights standards. Despite well-documented human rights abuses in Libya, the EU has increased its support for the Libyan Coast Guards, and portrays the cooperation as a success story. This also serves the purpose of adopting a similar border control cooperation model with Chad and Niger. In other cases, cooperation inadvertently legitimises governments with questionable human rights records, as in the case of Sudan. The EU should balance its approach, as it risks losing more credibility as a normative power among both populations at home and partner countries.

The EU crisis response mode and the resulting overemphasis on the fight against irregular migration has further called into question the effectiveness of the GAMM. This is amplified by the vertical coherence challenges apparent under the GAMM, as Member states have yet to provide additional financial and mobility incentives. As long as the EU fails to deliver on legal migration channels, more investment and development aid, third countries along the Central Mediterranean Route will have reduced motives to cooperate in the migration governance architecture. In light of the apparent human rights challenges outlined above, a revision of the current migration governance approach under the GAMM is needed.

## 2. Operational challenges to comprehensive EU migration management

The EU’s comprehensive approach to migration management is designed to offset some of the structural challenges of its migration governance architecture. However, the majority of EU and Member-State funded projects along the Central Mediterranean Route focus on preventing irregular migration and trafficking through better information and protection of vulnerable migrants, while strengthening law enforcement and prosecution capacities to curb these issues. Security and migration control thus clearly supersede the tackling of root causes through development.

The question remains how the above structural challenges translate into practice when it comes to the management of migratory flows along the Central Mediterranean Route. To answer this question, we have to assess the EU’s key operational instruments and their challenges at the intersection of migration, security and development.

### 2.1. Misunderstanding the migration-security nexus

One of the central issues at the intersection between migration and security is human smuggling and trafficking. With over 755,000 migrants arriving in Italy through the services of smugglers between 2011 and 2017, the size of the issue is considerable and the EU has dedicated substantial operational resources for this purpose.

Policymakers, however, regularly conflate trafficking and smuggling in popular discourse, most prominently the EU High Representative for Foreign Affairs and Security Policy, Federica Mogherini, who recently called irregular migration “*a new form of slavery*”<sup>47</sup>. While trafficking is a crime against the individual, the term smuggling encompasses a voluntary relationship between the smuggler and a migrant that is reminiscent of a service agreement. Smuggling and trafficking require different approaches by the state as delineated under their respective protocols in the UN Convention against Transnational Organised Crime.

46. Deutsche Welle, “EU, African leaders back migrant evacuation plan in Libya as summit closes”, 30 November 2017

47. Euractiv, “Mogherini: ‘Illegal migration is a new form of slavery’”, 13 September 2017

**TABLE 1** ► Differences between human smuggling and trafficking

	SMUGGLING	TRAFFICKING
Definition	Migrant smuggling is the act of facilitating the irregular/illegal entry of a person into a state <sup>48</sup> .	Trafficking in persons is the act of exploiting an individual and may include modern slavery-like conditions <sup>49</sup> .
Power-relationship	Voluntary relationship between the smuggler and migrants representing a service agreement.	Trafficker coerces and controls an individual by means of the threat or use of force, abduction, deception, the abuse of power, or other forms of coercion.
Issue	Violation of a state laws by crossing borders without complying with the necessary requirements for legal entry.	Exploitation of an individual through prostitution or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

The conflation of trafficking and smuggling has reduced the effectiveness of dedicated operational resources, as they have focused on symptoms instead of causes. In Libya, institutional support programmes prioritise the provision of equipment and support to the Libyan Coast Guard and the Department for Combatting Illegal Migration. This is flanked by operational programmes such as the Frontex Operation Triton, as well as operation EUNAVFOR Sophia.

Similarly, cooperation with the Egyptian Government focuses heavily on technical assistance and capacity building for law enforcement and the judiciary. Programming on border management has largely been on hold or not approved due to government sensitivities regarding the involvement of international organisations. The lack of security approval is a common theme for all organisations in the country, as activities get caught up in the opaque structures of national security agencies.

Despite the breadth of security-focused programming and measures including EUNAVFOR across Libya, irregular arrivals via the central Mediterranean increased by 15% between 2015 and 2016. At the same time, Europol asserts that operational and financial resources from smuggling operations may feed terrorist activities, and IOM counselling interviews with migrants suggest that maritime crossings are indeed used to smuggle contraband. This is particularly concerning in light of the ongoing governance crisis in Libya and the abundance of weapons available in the country. With smuggling networks generating an estimated annual turnover of €5 billion, the threat posed by a possible crime-terror nexus is substantial.

” THE THREAT OF CRIMINAL CONTAGION BETWEEN MIGRANT SMUGGLING, OTHER FORMS OF ORGANISED CRIME AND TERRORISM, IS CONSIDERABLE.”

The threat of criminal contagion between migrant smuggling, other forms of organised crime and terrorism, is considerable, and will continue to grow unless operational approaches address the root causes on the ground. Migratory flows along the Central Mediterranean Route continued unabated despite substantial EU resources until July 2017. Unexpectedly, a local group that collaborated with smuggling networks changed sides and started assisting Libyan agencies. Since then, the number of departures has plummeted, with approximately 20,000 migrants arriving despite it being the peak migration season. This temporary break in arrivals should serve to recalibrate the migration management response and to look into the causes of these large-scale flows.

## 2.2. An imbalanced approach to the development-security nexus

EU responses have also neglected the socio-economic roots of smuggling operations and irregular migration. The neglect of this nexus between security and development has resulted in poorly tailored operational responses.

Across the Middle East and North Africa, smuggling operations are organised by locally based networks with flexible structures that facilitate a service in exchange for money. Prospective migrants first seek contact with a broker – usually a well-known community member – who coordinates irregular journeys by establishing

contact with smugglers. Then, for the Mediterranean crossing, smuggling networks cooperate with fishermen to navigate vessels.

Current responses have disregarded operational bottlenecks of smuggling networks, instead focusing on capacitating third country partners as well as border patrolling. However, neuralgic bottlenecks should be apparent as smuggling rests on the availability of fishermen and boats while depending on cooperation by local communities. For fishermen and local communities, smuggling provides a much-needed substitute income, to make up for the shortfall in draught due to a decrease in fish stocks and limited economic opportunities over the past few decades. Addressing migrant smuggling and irregular migration thus means that the EU and its Member states need to take serious steps towards addressing alternative livelihoods for smugglers and their communities.

To date, €200 million have been approved under the EUTF to complement community stabilisation funding under the Regional Development and Protection Programmes for North Africa. Libya alone benefits from a €90 million package to provide host and migrant communities with protection, and socio-economic support for community stabilisation programming.

The amount of funding will hardly be sufficient to stabilise migrant communities in the war-torn country, or to provide a substitute for revenues from smuggling operations. The estimated annual value of this informal Libyan economy ranges between €275 and 325 million, thus providing an essential source of revenue for the deprived coastal cities. Unless alternative revenues are provided, the trade for illegal cross-border entry into the EU will remain a viable source of income.

The EU did not publicise any indicators and benchmarks to assess the impact of the EUTF, nor the amounts of money earmarked for specific programming. This has drawn criticism from think tanks and aid organisations, as they question whether development aid could effectively be redirected to border management programming. The Egyptian Government has regularly reminded donors in and outside Khartoum Process meetings that alternative livelihoods and local development are essential for the prevention of irregular migration. However, European donors are reluctant to approve development interventions, and instead earmark funding for capacity building and voluntary return programmes.

Unless the EU can substitute the income provided by smuggling operations, migrants will continue to find service providers who facilitate clandestine entries into Europe. Similarly, and in the absence of more regular migration opportunities, people will continue to seek a better life abroad until livelihood opportunities exist at home.

### 2.3. Unused opportunities: Voluntary return and reintegration

While EU countries have resettled negligible numbers of refugees through national and EU resettlement programmes, voluntary return programming is very fashionable as regards assisting migrants stranded in transit. In December 2016, the EU, Germany and Italy signed a €100 million project with the IOM whose centrepiece is the return of 24,000 migrants to countries along the Central Mediterranean Route. Similarly, European donors regularly approach international organisations in North Africa for funding on returns, in a bid to curb the flow of irregular migrants to Europe.

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#### BOX 1 ► Brief overview of voluntary return programming

Voluntary return (and reintegration) programmes seek to alleviate the vulnerabilities of stranded migrants. Many migrants get stuck in transit or in their destination country, either because they exhaust their financial resources, migratory routes close, or they are detained by law enforcement or traffickers. Since migratory flows are mixed (i.e. include asylum seekers, unaccompanied children and others), the protection needs are diverse and migrants are often vulnerable to exploitation and abuse.

Through voluntary return programmes, migrants willing to return home receive the pre-departure services (administrative & medical), flight tickets and transportation to their home country. Depending on the programme, beneficiaries also receive reintegration support upon return – either individually or community based – to prevent repeated irregular migration and to ensure sustainable reintegration into their communities.

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Voluntary return is a cost effective and humane alternative to deportations, as it provides migrants both in and outside detention with the option to voluntarily return home. While deportations from the EU to Nigeria

cost up to €9,000, the voluntary return of a Nigerian from North Africa would cost approximately €1,000, including administrative costs. Without a deportation letter, migrants can simply re-enter their countries of origin, facilitated by an organisation such as the IOM. At the same time, return programmes mitigate migrants' vulnerabilities to exploitation and abuse in transit.

Despite being an effective migration management tool, voluntary return programmes are marked by several operational weaknesses. First, the ability of migrants to reintegrate in their communities is limited, as the same migration drivers are likely to persist upon return. Even under programmes where beneficiaries receive reintegration support – mostly a nominal amount around €1,000 – funding is insufficient to make up for the resources invested in migration journeys, and to create sustainable income-generating projects in their communities.

The impact of new approaches whereby returnees are allowed to pool individual reintegration grants into collective reintegration or community projects has yet to be assessed over time. Unless these group projects are supported by private sector expertise, the risk of returnees deciding to irregularly migrate again persists.

On a community level, return programmes are currently not supported by major investments to stabilise major migrant sending communities at large. The EU and its Member states need to take the reintegration of returning migrants seriously and invest more resources to prevent repeated irregular migration and to stabilise sending communities, including through voluntary return and reintegration programmes. However, such interventions have to be adequately resourced in order to make a difference. Otherwise, they merely provide temporary relief to problems that need to be addressed in the long term.

### 3. Three elements for more holistic EU migration management

A combination of operational interventions and progressive policy options are needed to strengthen the EU's migration governance and management architecture. For this purpose, EU actors need to lay out a transparent implementation pathway, in cooperation with third countries, which adapts to the particular socio-economic contexts and migration dynamics of each partner country. This would incentivise better cooperation under the GAMM, based on mutual trust and understanding.

#### 3.1. Strengthen the migration-security-development nexus

Holistic migration management needs to combine development- and security-focused approaches that effectively address the socio-economic realities and security dimensions on the ground. In order to demobilise smuggling networks, the EU and its Member states need to combine security- and development-focused interventions in line with the UN Convention against Transnational Organized Crime. To this aim, the EU needs to support national agencies in transit countries to implement programming outlined under the Palermo Protocol that responds to the crime in question, be it smuggling or trafficking. Technical assistance and capacity-building programmes rolled out for this purpose should not be 'one-off' interventions, but instead empower national agencies over a sufficient timeframe, with regular monitoring and follow up. This needs to be complemented with operational resources from the EU and its Member states to strengthen search and rescue as well as border management missions, in line with international standards.

” LOCAL COMMUNITIES  
IN TRANSIT COUNTRIES  
NEED TO BE GIVEN  
CREDIBLE OPPORTUNITIES  
TO FIND EMPLOYMENT.”

Complementing the above, the EU should move beyond mere capacity-building interventions and maritime operations. Local communities in transit countries need to be given credible opportunities to find employment in order to provide viable alternatives to their involvement in smuggling operations. In developing operational responses, programming needs to target bottlenecks in smuggling operations such as the availability of fishermen and boats in North Africa. This could take the form of swap programmes for fishermen who are willing to hand in their boats in exchange for access to technical vocational training and alternative livelihood schemes. These programmes would need to be adequately resourced through the EUTF and bilateral funding from EU Member states in order to achieve

lasting change. Targeting the operational bottlenecks of smuggling operations also mitigates the risks of criminal contagion with organised crime and terrorist groups.

The development of such interventions should not be top-down, but instead incorporate design thinking or other participatory approaches to ensure relevance and ownership. Thereby, EU donors and implementing partners could ensure that proposed interventions respond to local needs and reflect the realities of community members. Such an approach holds real prospects for demobilizing smuggling operations in the long term, while at the same time reducing the risks emanating from the crime-terror nexus.

### 3.2. Establish positive alternatives at home & abroad

The EU needs to provide positive alternatives for migrants – both abroad and within Europe – in order to incentivise third country cooperation on GAMM instruments and to provide tangible alternatives to irregular migration. A study conducted by the EU Parliament highlights already existing shortages in low- and high-skilled jobs across Europe, while demographic changes across the continent will effectively reduce Europe's population by 100 million over the next decade. At the same time, the demographics of developing countries are characterised by an oversupply of labour, such as in Egypt, where 40% of the population is aged between 10 and 20. Well-managed labour migration therefore holds great potential for encouraging development on both sides of the Mediterranean.

In light of these structural imbalances, the EU and Member states should better coordinate EU and national level policy development on labour migration, and maximise the potential of demand-driven migration on both sides of the Mediterranean. IOM Egypt developed a concept for this purpose in the form of an Observatory for Human Mobility (OHM). The OHM would act as a platform for the analysis of data relating to labour market needs on both sides of the Mediterranean, as well as systematizing information on training and educational mobility, labour migration and circular migration opportunities. This would then be used to address labour market imbalances on both sides of the Mediterranean and provide tangible legal migration avenues to third countries.

In parallel, the EU should complement the proposed establishment of Erasmus Pro through an Erasmus Pro Mundus programme to provide demand-driven technical vocational training schemes for jobseekers in third countries. For this purpose, the EU should establish training and education centres to train jobseekers in the skills and topics relevant for the private sector on both sides of the Mediterranean. Graduates would be certified in line with international standards, to ensure that their skills are transferable. The graduates would then be put in contact with employers in the EU or in their respective countries of origin, thus satisfying the demand for skilled labour in priority sectors in the EU and third countries.

Furthermore, the EU should establish innovation labs in cooperation with academic institutions and private sector partners in order to provide opportunities for young entrepreneurs. The labs would provide a space for young graduates to build technical skills in innovation design, IT and programming, as well as project management, to strengthen entrepreneurship in third countries. Most importantly, these innovation labs would need to be equipped with (1) a contingent of grants to provide the capital for start-up activity; and (2) scholarship programmes for entrepreneurs to benefit from incubation programmes in the EU. This would encourage local development in third countries while providing possibilities for synergies with the private sector in the EU.

Both of the abovementioned initiatives would provide positive alternatives for at-risk migrants, and could be supported through bilateral funding envelopes and the EU External Investment Plan.

### 3.3. Upgrade reintegration programming

Upgrading existing voluntary return and reintegration programmes is essential in reintegrating returning migrants sustainably. To this aim, three aspects have to be addressed in the short term. First, every returning migrant needs to be provided with a reintegration grant in order to ensure that the beneficiary has the resources to reintegrate back home. Second, the grants themselves also need to be increased beyond the €1,000 to €1,500 currently available under existing projects, as they are insufficient to create sustainable

income-generating projects in the majority of cases. Third, group counselling sessions need to be a regular part of migrants' reintegration process, to facilitate the exchange of experiences and create possible synergies for collective reintegration projects.

To support the above, the EU should enable research centres to assess main return communities in third countries, with a view to identifying employment sectors and labour market needs. The findings of the respective analyses could then be used to develop reintegration plans with returning migrants, in order to strengthen the sustainability of income-generating projects. In addition, the findings could inform the development of curricula at the technical vocational training centres proposed above. Returning migrants would then be connected to the respective training programmes and put in touch with job opportunities in their communities.

**” CASH TRANSFER PROJECTS SHOULD BE PILOTED IN COMMUNITIES OF RETURN, ACROSS THIRD COUNTRY PARTNERS.”**

As an innovative mechanism, cash transfer projects should be piloted in communities of return, across third country partners, with a view to encouraging local development and thereby stabilising such communities. Projects should be implemented as an alternative to guided reintegration projects in order to provide migrants with the flexibility to pursue their goals. The effectiveness of this approach has been demonstrated across Africa, Asia and Latin America. As a positive side effect, this mechanism offsets large parts of funding that otherwise covers the costly administration of reintegration projects by implementing partners.

Depending on their scale, cash transfer projects are resource-intensive at the outset. The financial resources for these projects could come from a combination of funding from the EUTF, bilateral funding, as well as from existing development aid envelopes.

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**BOX 2** ▶ Synthesis of impact studies compiled by GiveDirectly under <https://www.givedirectly.org/research-on-cash-transfers>

Cash transfer projects have produced a solid evidence base on the effectiveness of this poverty alleviation tool across communities in Africa, Asia and Latin America. Despite variations in project design and local contexts, three specific advantages can be identified:

**1) Positive impact on development indicators**

Several studies found that cash transfers increase schooling and decrease child labour. Studies also demonstrate the positive development impact on children, including height-for-age and weight-for-height benefits, reductions in HIV infection rates, and reduced incidences of low birth weight.

**2) Long-term development impact**

Robust evidence indicates that cash transfers generate increases in future income, with one study finding a 64-to-96% increase five years after receiving the grant. Beneficiaries often save or invest significant portions of the received fund, generating increases in future income.

**3) No evidence of abuse of cash transfers**

Studies consistently demonstrate no significant impact on spending for alcohol, tobacco or other negative consumables. The majority of studies find no negative impact on the number of working hours, while others show an increase in the number of hours worked as beneficiaries obtain better jobs.

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### 3.4. Ensure adequate funding and support

Comprehensive migration governance and management is resource-intensive and requires synergies between available EU funding mechanisms and additional envelopes. If the lessons learned from the EUTF are any indication, it will be difficult to encourage Member states to take serious steps towards funding migration management interventions on an ad hoc basis.

Increasing the share dedicated to external migration management should therefore be a key priority during the upcoming negotiations on the next Multiannual Financial Framework (MFF) for 2021-2027. This is also one of the central recommendations of the Commission's reflection paper on the future of EU finances. Political barriers are conceivable, however, in light of diverging Member state priorities and the expected budget cuts resulting from Brexit. However, if EU actors want to ensure reliable funding sources for resource-intensive

projects addressing root causes in African source and transit countries, increasing funds for migration management in the MFF would be the preferred option<sup>48</sup>.

The EU and implementing partners should explore alternative financing options through partnerships with the private sector at home and in third countries. The EU External Investment Fund is a step in the right direction as it envisages a stronger role of the private sector to mobilise resources for the advancement of programming to address migration drivers. However, partnerships also need to go beyond the mobilisation of financial resources and use private sector operational expertise in education and job creation. Such synergies would reduce the financial burden created by the establishment of new programmes, and instead scale existing capabilities. Private-public partnerships are therefore promising if implemented in due consideration of local contexts and needs.

## CONCLUSION

The EU has to commit to the full spectrum of its migration governance and management architecture. This paper has highlighted some of the central challenges of the EU migration architecture and proposed smart tools to improve the management of migratory flows across the Mediterranean:

- Better addressing the security-development nexus
- Establishing positive alternatives to irregular migration in Europe and abroad
- Upgrading voluntary return and reintegration programming
- Ensuring adequate resources for migration management through innovative funding and partnerships

Unless the EU and Member states address the prevailing flaws in the migration governance and management architecture, migration flows are bound to remain high on the political agenda. The EU should adapt its migration governance and management architecture in view of the upcoming negotiations for the global compacts on migration and refugees. To this aim, Member states need to present legal migration packages, financial incentives and strong management approaches in order to better manage migration and to incentivise third country cooperation on the global compacts. This is the only way the EU can remain in the driver's seat and maximise the positive impact of migration.

<sup>48</sup>. Enderlein, Henrik & Koenig, Nicole, "Towards Dublin IV: sharing norms, responsibility and costs", Jacques Delors Institute, 29 June 2016

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