

# Operation «POSEIDON» (in Greece)

- **Since 2006**, FRONTEX (and now EBCG) supports Greece with guest officers, who perform **border surveillance**, assist in the **identification and registration of incoming migrants**, as well as debriefing and screening. Operation “Poseidon” is increasingly becoming a **multipurpose operation** covering a number of aspects of cross border crime including **smuggling of illegal substances, weapons, detection, forged documents** and many other coast guard functions such as **SAR, detection of illegal fishing and maritime pollution**.
- When migratory pressure on this route dramatically increased in 2015, the Operation was strengthened on Greece’s most affected islands in the Eastern Aegean, by bringing additional officers, vessels and aircraft to help in patrolling and search and rescue operations, as well as in assisting the Greek authorities with the identification and registration of arriving migrants and refugees, along with interpreters and forged document experts, and with regard to returns and readmissions from the hotspots.
- The **area of operation covers the sea borders between Greek and Turkey and the Greek islands**.



	667	← FRONTEX GUEST OFFICERS → DEPLOYED
	19	← VESSELS → ← AIRCRAFT → ← HELICOPTERS → DEPLOYED
	1	
	2	

# Operation «THEMIS» (in Italy)

- **Operation THEMIS succeeded Oper. TRITON, which had succeeded Oper. MARE NOSTRUM.**
- The latter was initiated by Italy in 2013 **to control migratory flows from Africa and Middle East**, after the Lampedusa tragic incidents (more than 500 people drowned in a few days in October 2013), including SAR missions. The enormous cost of the Operation (114 million Euros) caused Italy to suspend the Operation, but **after a series of new accidents** (more than 1000 people drowned within a week in April 2015), **the EU developed Oper. TRITON**, using FRONTEX. Given the volume of refugees landed in Italy over the past four years (more than 600.000), the Italian government accused the EU of lacking solidarity and criticized the refusal of Spain and France to open their ports to rescue ships carrying refugees. Thus, in February 2018, the EU initiated **Operation THEMIS**, aiming at Italy no longer being obligated to receive all migrants rescued by FRONTEX, as now they must be delivered to the nearest EU port rather than to only Italian ports.
- The **primary focus** of Operation THEMIS has been shifted from mere **border control and surveillance**, on on law enforcement with the aim of cracking down on criminal activities, such as **drug smuggling, illegal fishing and maritime pollution**. **Search and rescue** remains also a crucial component of the Operation.
- Officers deployed by the agency also support the Italian authorities in the **registration of the arriving migrants**, and the **collection of intelligence** about people smuggling networks operating in Libya and other African countries on the smuggling routes, as well as about **detecting foreign fighters and other terrorist threats** at the external borders. The relevant information is sent to the Italian authorities and Europol.
- All vessels and aircraft deployed within the framework of TRITON **operate under the command of the Italian Ministry of Interior**.
- Based on Oper. TRITON's operational area, which covered **the territorial waters of Italy as well as parts of the search and rescue (SAR) zones of Italy and Malta, stretching 138 NM South of Sicily**, Oper. THEMIS the Central Mediterranean Sea from waters covering **flows from Algeria, Tunisia, Libya, Egypt, Turkey and Albania**. **Italy's southern Adriatic coast will now be included**, but vessels' typical operational area will be reduced from 30 nautical miles (55.6 kilometers) from the Italian coast to 24 miles (44.5 kilometers).



## OPERATION THEMIS

### MAIN AIMS



← FRONTEX GUEST OFFICERS →  
DEPLOYED

523



← VESSELS →

9



← AIRCRAFT →

3



← HELICOPTERS →

2







DEPLOYED



# Operations in Western Mediterranean

- Officers deployed by Frontex in Spain take part in various joint operations, including three focused on Spain's sea borders: **Hera, Indalo and Minerva**.
- Within the framework of these Operations, initiated and managed by FRONTEX, the Agency supports the national authorities with border control and surveillance, identification and registration and its ships and airplanes contribute to search and rescue operations. The agency has been assisting the Spanish authorities not only at sea, but in various sea ports and at international airports.
- More specifically, officers, aircrafts and sea vessels are deployed, in cooperation with the Spanish authorities in order to perform actions for **border surveillance, help register migrants, search and rescue**. Furthermore, support is being provided, by specialized personnel, in order to **identify forged travelling documents, locate and seize stolen vehicles, weapons and illegally imported goods (i.e. cigarettes) and substances (i.e. drugs), and collect information on criminal smuggling networks**, which is shared with national authorities and Europol in support of criminal investigations. They also provide **support in identifying vulnerable migrants**, such as victims of trafficking, including those in need of international protection.
- The Western Mediterranean region has also long been a major conduit for drug smugglers seeking to bring hashish, cannabis and cocaine by sea to the lucrative European markets. Frontex vessels and aircraft assist the Spanish authorities to **disrupt the drug smuggling operations**.



1,440		people rescued between July and September 2016 with Frontex assets involved
105		Frontex guest officers deployed
3		vessels
2		aircraft

# Cooperation between FRONTEX and NATO in the Aegean Sea

- On 11 **February 2016** NATO Defence Ministers decided to deploy ships to the Aegean Sea to support Greece and Turkey, as well as the European Union's border agency FRONTEX, in their efforts to tackle the refugee and migrant crisis.
- NATO's Standing Maritime Group 2 (SNMG2) arrived in the Aegean Sea within 48 hours of the Ministers' decision. It is **conducting reconnaissance, monitoring and surveillance in the territorial waters of Greece and Turkey, as well as in international waters..**
- NATO's deployed ships are **providing** (through liaison arrangements between Allied Maritime Command and FRONTEX) **real-time information** to the coastguards and relevant national authorities of Greece and Turkey, as well as to FRONTEX, helping them in their efforts to tackle this crisis and take even more effective action. Furthermore, Greek, Turkish and FRONTEX liaison officers have been deployed to the NATO Aegean activity, which also enables the exchange of information.

31



10,000



ships from 8 different nations participated so far

hours patrolled by NATO ships in the Aegean



# Another institutional development: Operation «Sophia» in the CSDP framework

- **Operation European Union Naval Force Mediterranean (EUNAVFOR Med) or Operation «Sophia»** - area of operations: Central & South Mediterranean Sea.
- It is **the first EU mission within the CSDP framework, after the amendments introduced by the Lisbon Treaty** (in force since 2009), on EU “peacekeeping, humanitarian and military missions”
- It has been prepared and formulated during the first semester of 2015 by the competent EU bodies and it was approved by **Council Dec. 778/2015**, as a military operation to disrupt the entire system and network of smuggling humans, with an operational mandate, initially active for 12 months.
- The core mandate is *“to undertake systematic efforts to identify, capture and dispose of vessels and enabling assets used or suspected of being used by migrant smugglers or traffickers, in order to contribute to wider EU efforts to disrupt the business model of human smuggling and trafficking networks in the Southern Central Mediterranean and prevent the further loss of life at sea.”*
- By **Council Dec. 993/2016** the Operation’s mandate was extended until July 2017 and enriched by two supporting tasks: **a) training of the Libyan coastguards and navy; b) contributing to the implementation of the UN arms embargo on the high seas off the coast of Libya.**
- By **Council Dec. 1385/2017** the Operation’s mandate was further extended until December 2018 and supplemented by three new additional tasks: **a) to set up a monitoring mechanism of the long-term efficiency of the training of the Libyan Coastguard and Navy b) to conduct new surveillance activities and gather information on illegal trafficking of oil exports from Libya and c) to enhance the possibility for sharing information on human trafficking with member states law enforcement agencies, FRONTEX and EUROPOL.**



- **Area of Operation: Central part of Southern Mediterranean Sea**
- **Headquarters: Rome, Italy**
- **Mission Launch: 22 June 2015 - Mandate Approved until: 31 December 2018**
- **Operation Commander: Rear Admiral Enrico Credendino (IT Navy)**
- **Task Force's Flagship: Italian auxiliary ship (AOR) IT ETNA**
- **Force Strength: At the moment operation Sophia Task Force can count on 5 ships** (1 Italian Landing platform dock, 1 German frigate, 1 Spanish frigate, 1 UK auxiliary ship, 1 France OPV), **2 organic helicopters** (1 Italian, 1 Spanish) **and 4 air assets** (2 Luxembourg, 1 Spain, 1 Polish).
- **Contributing Member States: 27 (AUT, BEL, BGR, CYP, CZE, ESP, EST, FIN, FRA, GER, GBR, GRE, HRV, HUN, IRL, ITA, LAT, LIT, LUX, MAL, NED, POL, POR, ROM, SLO, SVK, SWE)**
- **Operation Budget:** military assets and personnel are provided by the contributing States with the running costs and personnel costs being met on a national basis. The common budget has been agreed and monitored by the Athena Committee of Member States. For the period 27 July 2017 to 31 December 2018, the reference amount for the common costs of EUNAVFOR MED operation SOPHIA shall be € 6.0 million.
- **Why “Sophia”:** Sophia is a baby born on 24 August 2015 at 04.15 am on board the German frigate “Schleswig-Holstein”, operating in the Central Mediterranean Sea as part of EUNAVFOR MED Task Force. Born from a Somali mother rescued together with other 453 migrants, Sophia was named after the Prussian princess Sophia of Schleswig-Holstein (1866 - 1952). Based on that incident, it was decided to rename Operation EUNAVFOR MED, to “Sophia”, to honor the lives of the people saved, and to highlight the importance of fighting the smugglers and the criminal networks as a way of protecting human life.

- Operation SOPHIA is designed around **4 phases** :
- **Phase One**: deployment of forces to build a comprehensive understanding of smuggling activity and methods, (now completed)
- **Phase Two**: boarding, search, seizure and diversion of smugglers' vessels on the high seas under the conditions provided for by applicable international law. This activity will be extended into Territorial Waters upon the release of any applicable United Nation Security Council Resolution (UNSCR) and the concerned coastal State consent;
- **Phase Three**: taking operational measures against vessels and related assets suspected of being used for human smuggling or trafficking inside the coastal states' territory. Once again, this is subject to the necessary legal framework established by UNSCR and following coastal state consent;
- **Phase Four**: withdrawal of forces and completion of the operation.
- It is an operation with **full military characteristics**, with specific rules of engagement, rules of apprehending and detaining smugglers, rules of treating smuggled people (even hostages).

89		smugglers & traffickers arrested by Italian authorities following EUNAVFOR Med activities
303		vessels removed from criminal organisations availability
26,428		migrants rescued
183		rescue operations
38,915		migrants rescued through EUNAVFOR Med aero-naval support

# Concerns from the Institutional Challenges

- Given that EU Operations on controlling migratory flows in the Mediterranean Sea are mainly sea operations, it is very interesting to examine their relationship with the relevant legal framework, namely the United Nations Convention on the Law of the Sea (UNCLOS).
- There are **two approaches**.
- The first is the “**Sovereignty Approach**” focusing on issues arising from the intervention of EU forces on ships under a state’s flag or in territorial waters or in other zones of another state.
- The second is the “**Humanitarian Approach**” focusing on issues arising from the impact of the EU activities on the immigrants, as well as the smugglers, involved in these operations.
- These two approaches are **distinct** and yet **mutually influential**, as their elements interact.

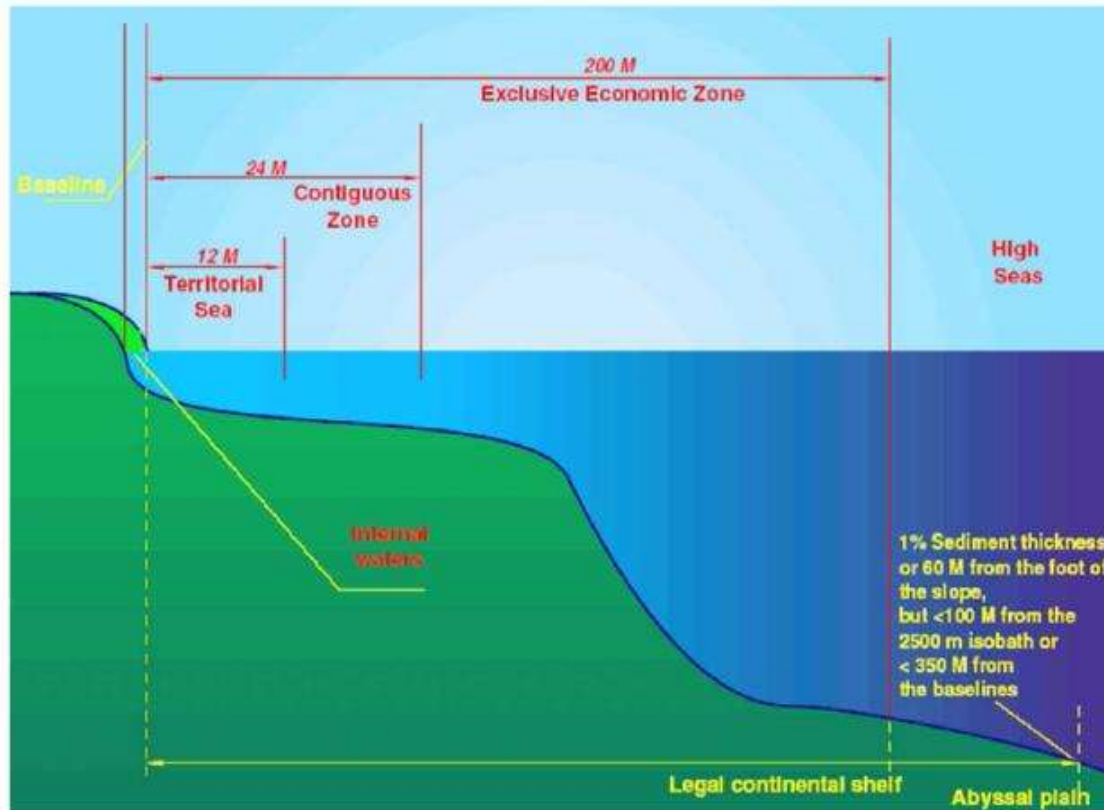
# Sovereignty Approach

## Maritime Zones

(For Illustrative Purposes Only)

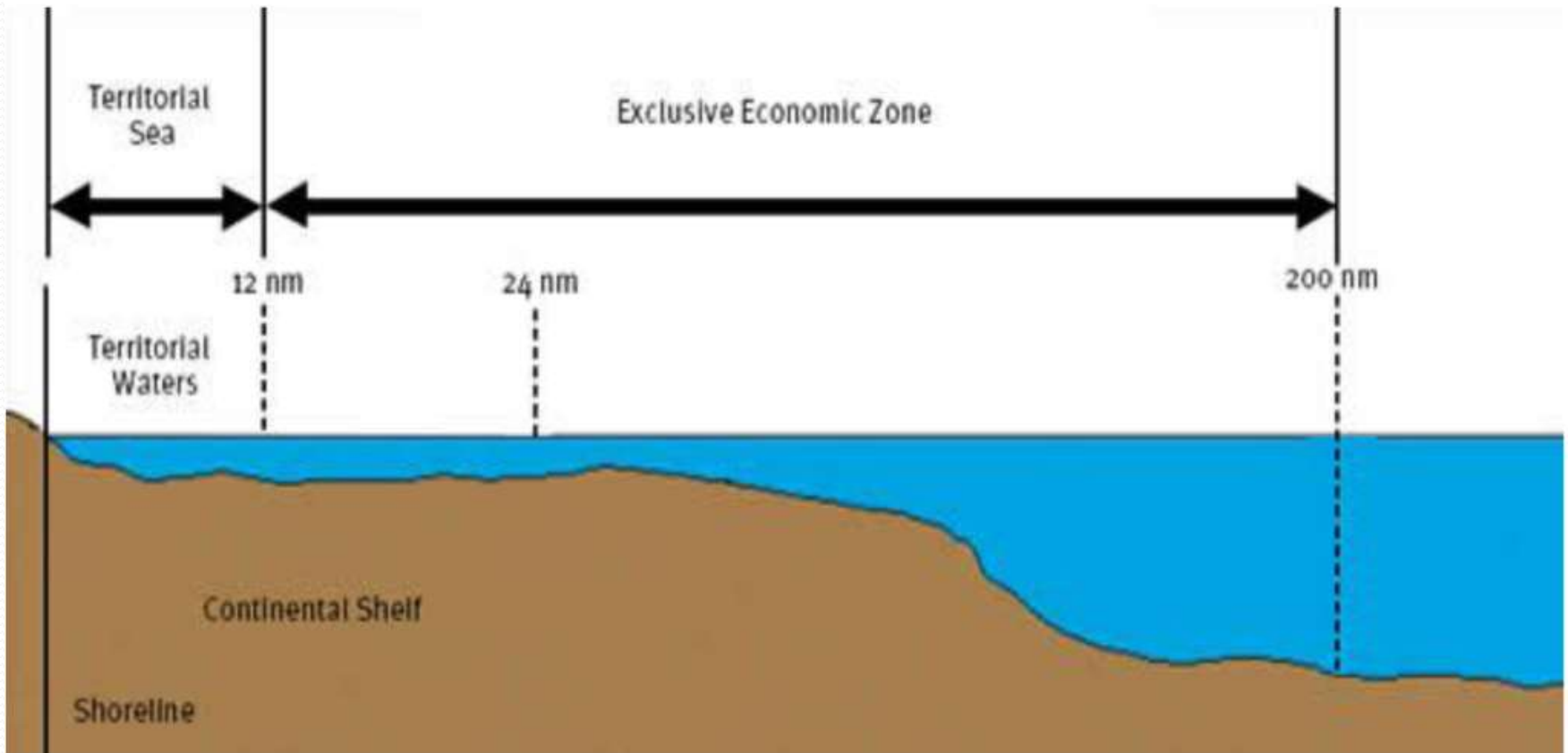


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# UNCLOS



# UNCLOS

- 1. Territorial Waters (TTW)**
- 2. Contiguous Zone**
- 3. Exclusive Economic Zone (EEZ)**

## Territorial Waters (TTW)

- UNCLOS Part II, Section 2
- 12 NM
- Sovereignty extends seabed, subsoil, airspace above TTW
- Responsible for authority environmental protection, resource conservation and safety of navigation
- Under National legal policy for Customs, fiscal, immigration and public health issues.

## Contiguous Zone

- UNCLOS Part II, Section 4
- Adjacent to TTW not beyond 24 NM
- Not Sovereignty
- Preventive measures regarding: Customs
  - Fiscal
  - Immigration
  - Sanitary Law

## Exclusive Economic Zone (EEZ)

- UNCLOS Part V
- Sovereign rights for the purpose of EXPLORING and EXPLOITING, conserving and managing the NATURAL RESOURCES, whether LIVING OR NON-LIVING, of the WATERS SUPERJACENT TO THE SEABED and of the SEABED and its SUBSOIL, and with regard to other activities for the economic exploitation and exploration of the zone.
- Not beyond 200 NM

- **Coastal State Jurisdiction in the Territorial Sea**
- **art. 2 UNCLOS** on the legal status of the territorial sea states that “*the sovereignty of a coastal State extends, beyond its land territory and internal waters...to an adjacent belt of sea, described as the territorial sea*”.
- **Innocent Passage in the Territorial Sea (articles 17 to 32 of UNCLOS)**
- **art. 17 UNCLOS:** Ships of all States, whether coastal or land-locked, enjoy the right of innocent passage through the territorial sea .
- **art. 19 UNCLOS:** Passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State. Such passage shall take place in conformity with UNCLOS and with other rules of international law. List of activities that are considered not to constitute innocent passage through the territorial sea, for example:
  - the loading or unloading of any commodity, currency or person contrary to the customs, fiscal, immigration or sanitary laws and regulations of the coastal State
  - any other activity not having a direct bearing on passage.
- **art. 27 UNCLOS:** addresses the criminal jurisdiction of a coastal State aboard foreign ships passing through its territorial sea.



- **High Seas: art. 87 UNCLOS:** Freedom of the high seas is exercised under the conditions laid down by this Convention and by other rules of international law
- **Exclusive jurisdiction of the flag state: art. 91 UNCLOS:** Every State has the right to sail ships flying its flag and ships have the nationality of the flag flown - **art. 92 UNCLOS:** Ships shall sail under the flag of one State only and, save in exceptional cases expressly provided for in international treaties or in this Convention, shall be subject to its exclusive jurisdiction on the high seas
- **Right of visit: art.110 UNCLOS:** *Except where acts of interference derive from powers conferred by treaty, a warship which encounters on the high seas a foreign ship is not justified in boarding it unless there is reasonable ground for suspecting that foreign ship – applicable also to ships without nationality.*
- **Naval interdiction programmes/pre-border operations:** Action of one state or more, undertaken on the basis of an international agreement, aimed at exercising the right of visit in relation to criminal activities not listed in article 110 UNCLOS, performed by ships without nationality or by vessels sailing the flag of a state or a group of states.
- **There is no internationally accepted definition of at sea interception or interdiction.** According to the Executive Committee of the UNHCR interception or interdiction occurs when mandated authorities representing a State: **(i) prevent embarkation** of persons on an international journey, **(ii) prevent further onward international travel** by persons, who have commenced their journey, **(iii) assert control of vessels** where there are reasonable grounds to believe the vessel is transporting persons contrary to international or national maritime law.
- **EU is part of UNCLOS:** Initially, under the form of European Communities, the EU was granted the observer status, with regard to UNCLOS. In 1998, by Council Dec. 392/98, the EU became a contracting party to UNCLOS, to the measure of competences conferred upon it by its Member States.

The **EU maritime domain** encompasses the **EU Member States' maritime zones** as well as **all maritime-related activities carried out therein by cargo, small boats and vessels flagged, owned, managed by or bound to the EU**. Beyond the above, it also comprises **any Search and Rescue Area and any Area of Operations that has been designated for an EU Maritime Operation under civil or military authority**.

- Maritime surveillance is “**the effective understanding of all activities carried out at sea that could impact the security, the safety, economy, or environment of the European Union and its Member States**”
- In the **EU context**, **interdiction** is seen as a **two-step process**: **first**, the stopping, boarding, inspection, and search of a ship at sea suspected of prohibited conduct (**boarding**); and, **second**, where such suspicions prove justified, taking measures including any combination of arresting the vessel, arresting persons aboard, or seizing cargo (**seizure**). Seizure is always conditioned on and preceded by boarding.
- **The right of approach is not included within the concept of interdiction** as it is not unlawful for a governmental vessel on the high seas to draw near a foreign vessel to observe its flag or other marks of nationality. Such actions are not being regarded as hostile. Yet, the right of approach can be an interception measure, since the concept of interception is much broader as set out in the UNHCR definition.

- Also the **EU Schengen Borders Code** with regard to the surveillance of the sea external borders uses the notion of “interception” in a broad sense; given that the main purpose of border surveillance is to prevent unauthorized border crossings, to counter cross-border criminality, and to take measures against persons who have crossed the border illegally, the **relevant measures to be taken** in the course of a surveillance operation against vessels, with regard to which there are reasonable grounds for suspecting that they carry persons intending to circumvent the checks at border crossing points, may include, inter alia: **(1)** approaching the vessel; **(2)** a request for information; **(3)** stopping, boarding, and searching the ship; **(4)** seizing the ship and apprehending persons on board; and **(5)** ordering the ship to modify its course outside of or toward a destination other than the territorial waters or contiguous zone, or escorting the vessel, or steaming nearby until the ship is heading on such course.
- However, a **significant obstacle to the effectiveness of the Operations** is found in the contrasting interpretations of the International Law of the Sea by Member States as well as in the definition of the operational area.
- This led to a limited maritime surface contribution from Member States to the joint operations.
- **Operations are generally regarded as successful** in improving cooperation and knowledge sharing among Member States, as well as in streamlining procedures, and they ensure an increased degree of uniformity in the handling of irregular immigrants, traffickers and so on.
- Moreover it seems that they produce results on the ground (judging from the figures mentioned above).

- Especially **with regard to Operation SOPHIA** (as it is a full scale military operation) there have been considerations on the legitimacy of the action taken by the participants. Its own statute (Council Dec. 778/2015) provides that ~~the forces involved shall conduct the measures~~ of the second and third phase in accordance with any applicable UN Security Council Resolution or consent by the coastal State concerned, under the conditions set out in that Resolution or consent, except for operations in the high seas against vessels without nationality subject only to international law and therefore exposed to the authority of all states.
- This has been deemed as a **vague provision**, posing serious interpretation problems concerning the requirements for the use of military force, especially by conditioning the use of these measures using the wording "*any applicable UN Security Council Resolution*". The **test-case was Libya**. Given that there could not be a legally valid consent by that state (at the time a chaotic country with two rival governments in Tobruk and in Tripoli), only a Resolution could provide a way out. This was adopted on 9 October 2015 (**Security Council Resolution 2240** relating to cooperation to combat smuggling of migrants and human trafficking in Libya's territorial sea and on the high seas off the coast of Libya). This Resolution **authorizes Member States, acting nationally or through regional organizations [like the EU]**, to inspect on the high seas off the coast of Libya vessels that they have reasonable grounds to suspect are being used for migrant smuggling or human trafficking from Libya, provided that such Member States and regional organizations make good faith efforts to obtain the consent of the vessel's flag State prior to using the authority granted to them.
- **This Resolution is the result of a compromise**: while **enabling EU to break the deadlock and implement coercive measures on the high seas**, it **fails to authorize the measures in Libya's waters and coast**, thus compromising the operation by delaying and limiting its action. Thus it allows the door to remain open to the use of force other than that authorized by Security Council or Libya's consent, consonant with a realist rejection of consent as an essential condition of legitimacy, certain that Libya's government is incapable of controlling all Libyan territory.



- Evidently, **Resolution 2240 does not bind EU to Libyan consent** as the Security Council does not "decide" but only "calls on" Member States to assist in taking coercive measures in Libyan waters on Libya's "request." It seems reasonable to assume that the Security Council allows the EU to decide to implement these measures even without the consent of the Libyan government, albeit in accordance with international law.
- This leads to asking whether ensuring respect for international law really requires Security Council authorization of raids and other such coercive measures or indeed Libya's consent.
- Based on these provisions, the **EU provided, within the Operation SOPHIA's rules**, that the **EU will first seek to obtain permanent consent** from certain flag states (without, however, specifying how this will be achieved, but obviously this involves a certain form of standing agreements, which are also in line with the EU law). **If such consent has not been obtained, the Operation Commander will seek the ad hoc consent** of the flag state of vessels suspected of being engaged in the smuggling of migrants from Libya. The 'good faith efforts' mentioned in Resolution 2240 'will be considered to have been exhausted if there is no response to the request made within 4 (four) hours from the time of the request within the given time preparatory measures are authorized. **Thus, for the EU, 'good faith efforts' mean requesting the flag state for its consent** to board the suspect vessel and **waiting for four hours for that state to respond, after which** the authority of Resolution 2240 is triggered and the **boarding takes place without the respective flag state's consent.**

# Humanitarian Approach

- Based on well-established international customary law, UNCLOS provides for the duty to render assistance
- **art. 98 UNCLOS:** Every State shall require the master of a ship flying its flag, in so far as he can do so without serious danger to the ship, the crew or the passengers:
  - (a) to render assistance to any person found at sea in danger of being lost;
  - (b) to proceed with all possible speed to the rescue of persons in distress, if informed of their need of assistance, in so far as such action may reasonably be expected of him;
- Furthermore, the same provision requires coastal states to maintain a search and rescue service.
- In addition to these provisions, the **1974 International Convention for the Safety of Life at Sea (SOLAS)** requires ship masters, on hearing about a vessel in distress, to provide assistance and inform the search and rescue service that they are doing so.
- Also, the **1979 International Convention on Maritime Search and Rescue (SAR Convention)** requires parties to provide assistance to anyone in distress regardless of the nationality or status of such a person or the circumstances in which that person is found.
- So it is clear that, when vessels respond to persons in distress at sea, they are not engaged in interdiction. However, the issue is less clear when the vessels involved are operating in a (police or military) mission to prevent irregular immigrants from crossing sea borders, usually along with their smugglers (who hide amongst them).

- Furthermore, carrying out rescue operations does not exhaust the duty to render assistance, which extends to the disembarkation of the rescued people in a **place of safety**.
- According to IMO Facilitation Committee's Principles relating to administrative procedures for disembarking persons rescued at sea, **if disembarkation from the rescuing ship cannot be arranged swiftly elsewhere**, the Government responsible for the SAR area should accept the disembarkation of the persons rescued in accordance with immigration laws and regulations of each Member State into a **place of safety** under its control in which the persons rescued can have timely access to post rescue support.
- The **choice of the place of safety** : The need to **avoid disembarkation in territories** where the lives and freedoms of those alleging a **well-founded fear of persecution would be threatened** is a consideration in the case of asylum seekers and refugees recovered at sea.
- Relevant: **Art. 33 of the 1951 Convention** on the Status of Refugees forbids a country receiving asylum seekers from returning them to a country in which they would be in likely danger of persecution based on race, religion, nationality, membership of a particular social group or political opinion (**non-refoulement principle**)
- According to UNHCR and IMO, shipmasters are invited – for cases in which people rescued at sea claim asylum – to alert the closest RCC (Rescue Co-ordination Centre); contact the UNHCR; [to] not ask for disembarkation in the country of origin or from which the individuals fled; [to] not share personal information regarding the asylum seekers with the authorities of that country, or with others who might convey this information to those authorities.
- **All these are applicable in the cases of the EU Operations**, as the UN General Assembly Resolution 70/235 on Oceans and Law of the sea (23 December 2015), refers to migration by sea and calls upon States to ensure that masters on ships flying their flag take the steps required by relevant instruments to provide assistance to persons in distress at sea and recognizes that all States must fulfil their search and rescue responsibilities in accordance with international law, including UNCLOS.

- **The FRONTEX Operations have been criticized for not adhering these rules.**
- There have been occasions in which **no information was provided** about where the interception took place and how the FRONTEX staff managed to check if there were people falling under the ‘non-refoulement rule’ of the United Nations 1951 Convention and the 1967 Protocol Relating to the Status of Refugees.
- There are numerous reports of interceptions by border patrols taking place in international waters (beyond the 24 nautical miles zone of territorial waters), where the boats are intercepted and escorted back to the state where they set off for the crossing of the Mediterranean or the Atlantic. And this happened prior to any screening to see whether some of those on board these boats would fall under the ‘non-refoulement rule’. Migrants are then deported to countries which are considered as de facto safe third countries although, like in the case of Libya, have not ratified the United Nations Convention Relating to the Status of Refugees or have a working asylum system in place.
- The **same concerns were voiced in the case of the EU-Turkey “agreement”** due to Turkey’s verified poor performance on adhering international humanitarian and human rights law.
- This **procedure has been criticized as being in breach of international and European law** unless the respective authorities checked if each single migrant was in need of international protection, that is to say eligible to seek asylum.
- Deported migrants are then brought into detention camps where they wait for further resettlement to their countries of origin. The conditions in those detention camps are often reported to be below humanitarian standards.
- This **negative image is further enhanced** by the fact that both the pre-operational risk analysis plus the evaluation reports on various missions, are not made accessible to the public.



- There is a new approach to the security of global assets/interests/values, called the "**immediate security approach**" based on a few key requirements related to the responsibility to protect norm and intervention for tutelary purposes ("**tutelary**" **intervention**). This type of intervention (which includes humanitarian intervention) **includes forms of military coercion (raids and other military measures)** on ships and aircrafts in the sea and air space as well as in the territory of other states **without UN authorization to use force, even without the consent of the territorial state concerned** in cases of urgent necessity due to serious violations of fundamental rights when the territorial state is "unwilling or unable" to act.
- In such a case, **the intervention is not directed "against" the territorial state**. Rather, it **aims to protect the internationally recognized fundamental interests themselves**. This type of action is "collective" in nature and **is made possible by the "exceptional widening of the material and coercive powers" of the states engaged in the intervention** and exercised outside their own jurisdiction. **Limitations to sovereignty are not punitive, although they compel the territorial state to tolerate the implementation of the collective will by reason of the greater value accorded to global interests beyond the particular interests of individual states**. The force that intervening states use in a complementary or substitutive way can therefore not be considered "international force."
- Such an intervention **is not subject to prior authorization by the UN**, however, as a form of collective guarantee of global interests, **it remains under the UN's strict political control**. It must be performed in compliance with any applicable Resolutions as well as the criterion of proportionality and the mandatory nature of *jus cogens* norms imposing respect for life and the safety of migrants. In specific cases, such an action is considered legitimate provided the appropriate UN bodies (General Assembly, Security Council) and public opinion have not censured the intervention.

- **Operation SOPHIA has all the distinctive features required for "tutelary" intervention.** Coherence is signalled by the mission's expressly stated collective purpose, which aims at combating human trafficking rather than defending the national interests of EU member states, being also open to participation by third states. Furthermore, Libya and most states bordering the Mediterranean are "unwilling or unable" to stem the spread of this phenomenon. Finally, the need for intervention was officially presented as "urgent", highlighting the necessity to respond in an immediate and joint way to an exceptional situation that requires an exceptional and coordinated response.
- **All the EU operations offer a mixed image.** On the **one hand**, the instruments of sea borders surveillance and cooperation with third countries **have now generally included human rights safeguards** (i.e. the internal complaint mechanism of the new EBCG Agency, and its increased obligation to report more information to the Parliament and the Council). Operation Sophia's statute also explicitly states that it should be conducted in accordance with the principle of non-refoulement and international human rights law. Even the more controversial EU-Turkey Deal committed to protect all migrants in accordance with the relevant international standards and in respect of the principle of non-refoulement.
- On the **other hand**, uncertainty remains as to the implementation, monitoring and control of these human rights safeguards. Without clear accountability measures, there is no guarantee that the safeguards included in the above instruments are duly complied with, not ending up as mere declarations. Furthermore, **the primary aim of existing EU external migration policies and operations is still the protection of the EU external borders against those seeking refuge.** The recurring tragedies off the coasts of the Mediterranean should however prove the limits of repressive measures against migration and provide an incentive for the EU to adjust its priorities towards the rescue of migrants, by intensifying, in action, the protection of their most basic human rights.

# Corruption and EU Border Control

- “Corruption” includes a broad range of practices: bribery, collusion, trading in influence, conflict of interest, fraud, lobbying.
- The corrupt practices that border guards in particular can become involved in (because of the specific tasks they perform) can be divided into three main categories:
  - (1) involvement in organised criminal activities;
  - (2) petty corruption; and
  - (3) administrative/bureaucratic corruption.
- These practices vary within the EU and their manifestations depend upon a number of factors: differences in corruption pressures (from organised crime) and corruption opportunities along different types of borders (e.g. land vs. air borders); types of units (e.g. administrative vs. border guard patrols); income disparities; or institutional factors, such as the institutional subculture. Other important determinants of corruption among border guards are the institutional set-up, the powers and the institutional methods used to counter corruption.

- There are specific operational, human resources related, or technical measures that police and border guard institutions use to counter corruption.
- Common operational measures include staff rotation, electronic surveillance, streamlining and narrowly defining work processes, or team work.
- Common forms of measures concerning human resources management include background checks on new recruits, monitoring of personal assets and financial situation, a wide range of sanctions (penalties) or rewards schemes. In some MS, integrity testing has been introduced.
- The approaches to the investigation of corrupt border guards differ across the EU. While some border guards or police forces have dedicated internal affairs units, others rely on criminal police investigations.
- The advantage of using dedicated internal affairs units is that they often use proactive methods to uncover corrupt cases, such as risk analyses (e.g. data mining), integrity testing, anonymous reporting schemes, and so on. As a result, MS that have such dedicated units generally report higher number of corruption-related investigations or actual corruption cases.

- **Recommendations to Frontex**

- **Include the countering of corruption as part of the common integrated border management for all MS.**
- **Border corruption is a politically sensitive matter to MS.** Nevertheless, the threat posed by corruption is now generally recognised. It should be monitored as part of Frontex Risk Analyses.
- **Periodic assessments of the risk and threat of corruption in EU border guard institutions** should be undertaken.

- **Recommendations to the European Commission**

- **Make the issue of border-related corruption** (and this refers not only to border guards but also to customs or other border services) **an integral of the EU's Internal Security Strategy.**
- **Use instruments such as the External Borders Fund to promote exchange of best practices** and common approaches to tackling corruption among EU-27 border guards.
- **Work towards agreement on a set of minimum anti-corruption standards and measures,** and monitor the impact of such measures. The minimum aim might be to adopt a set of common principles to support the work towards this goal.
- **Cooperate with customs authorities in developing mechanisms for joint investigations** of corruption that involves both border guards and customs officers.

- **Recommendations To Member States**

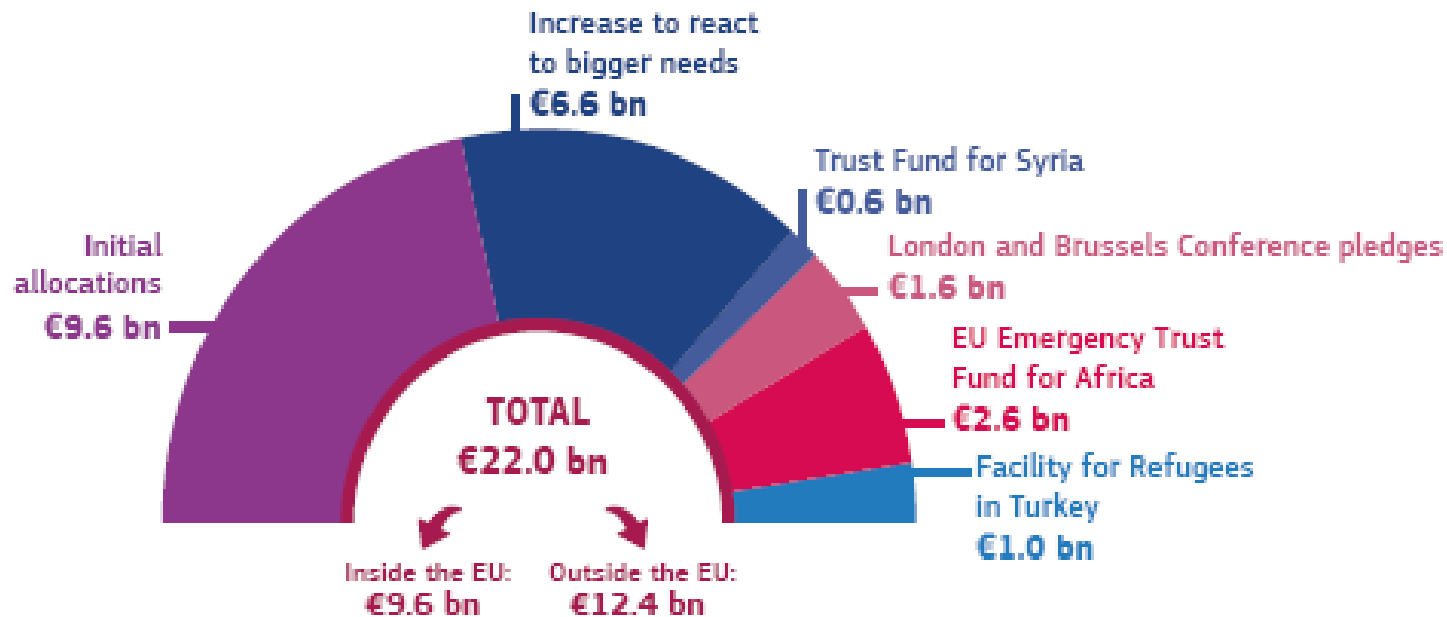
- **Work with third countries, especially along the eastern and southern land borders of the EU,** and encourage or support initiatives aimed at reducing corruption in their border guards or customs services.
- **Consider the adoption of a minimum set of corruption prevention measures** and risk-analysis tools.





# **Budgetary Challenges**

- The **resources from the EU Budget**, aiming at meeting the increased migratory challenges for the **period 2015-2018** has **more than doubled** to €22 billion from the original allocation of €9.6 billion.



## EU funding inside and outside the EU for the period 2015-2018

### Planned funding inside the EU

AMIF (Asylum, Migration and Integration Fund), ISF (Internal Security Fund) and Emergency Support Instrument .....	€8.2 bn
<i>Emergency funding</i> .....	€1.8 bn
<i>Long-term measures</i> .....	€6.4 bn
<hr/>	
Support to agencies and their operations .....	€1.4 bn
<b>TOTAL</b> .....	<b>€9.6 bn</b>

### Planned funding outside the EU

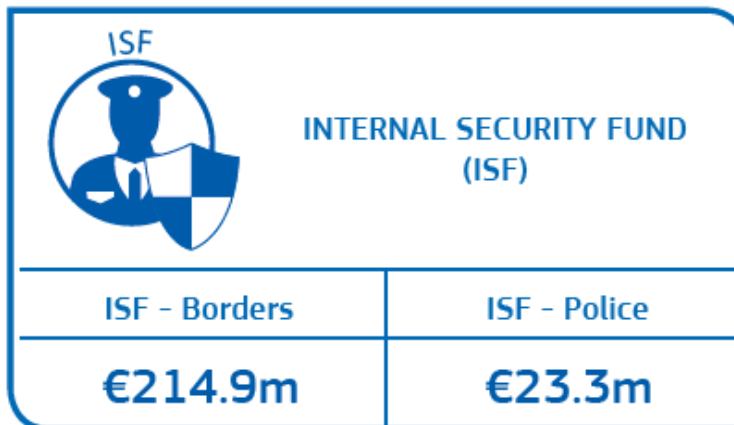
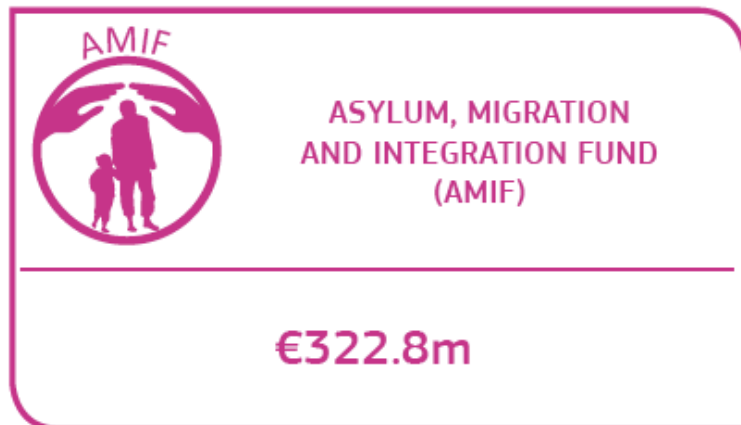
Humanitarian aid <sup>1</sup> .....	€3.5 bn
Support to border and migration management in Turkey and the Western Balkans .....	€0.3 bn
Support to livelihood opportunities, health, education for refugees and mobility policy .....	€0.8 bn
Return of refugees and displaced persons, aid and support to migrants, fight against root causes of migration <sup>2</sup> .....	€1.6 bn
Support to stabilisation and peace, security and border management of third countries .....	€0.4 bn
Trust Fund for Syria (MADAD Fund) <sup>3</sup> .....	€0.6 bn
Pledges from the London Conference in February 2016 and the Brussels Conference in April 2017 supporting the future of Syria and the region <sup>4</sup> .....	€1.6 bn
EU Emergency Trust Fund for Africa <sup>5</sup> .....	€2.6 bn
Facility for Refugees in Turkey (FRIT) <sup>6</sup> .....	€1.0 bn
<b>TOTAL</b> .....	<b>€12.4 bn</b>

# EU Financial Support to Greece for managing the migration crisis

- Two main sources of funding:
- The **Asylum, Migration and Integration Fund (AMIF)** which promotes the efficient management of migration flows and the implementation, strengthening and development of a common EU approach to asylum and immigration.
- The **Internal Security Fund (ISF)** which promotes the implementation of the Internal Security Strategy, law enforcement cooperation and the management of the Union's external borders. The ISF is composed of two instruments, ISF Borders and Visa and ISF Police.



## Long-term funding to Greece (allocations) 2014 - 2020



## Emergency Funding (allocated)

**€139.1m**

AMIF Emergency Assistance  
directly allocated to Greek authorities

**€55.8m**

ISF Emergency Assistance  
directly allocated to Greek authorities

**€197.4m**

Emergency Assistance allocated  
to International Organisations/Union Agencies  
(IOM, UNHCR, EASO)

Source: AMIF and ISF



# Reflections

- **Using the resources of the EU Budget** has been the main instrument available to the European Commission in order to formulate and implement policies during the period of the migration crisis.
- The sense of “emergency” which prevailed at the time allowed for a **re-organization and re-prioritization of the EU Budget’s appropriations** and of the aims of the funding tools, something which has been emphatically expressed with the establishment of schemes such as the EU Emergency Trust Fund for Africa and the Facility for Refugees in Turkey.
- The European Commission’s persistence in committed appropriations is seen as **an effort to cover the gaps created by its reduced competences in this field, or by the difficulties it encountered** when it tried to exercise the additional competences it acquired during the crisis, especially with regard to border management and to asylum and migration policies. **The capability of providing funding replaces the inability to take legal or political action.**
- Furthermore, all these **funding activities have been a useful and critical tool in terms of communicating information** in order to reassure the national authorities as well as the peoples of the Member States that the EU has been mobilized in order to tackle the problem. This symbolic function of funding activities justifies also the fact that the European Commission often refers to them and invokes them as proof of its actions.
- It should be noted, however, that these funding activities by the EU to tackle the migration crisis have created a situation of contradicting public interests. On the one side, there is the need for flexible action to meet urgent humanitarian and operational needs and on the other side there is the override of the legislation and the audit procedures. This is an **“instrumentalization” of EU funding** for immediate priorities, beyond the medium and long term objectives foreseen in the statutory texts of the various funding schemes employed, i.e. in the case of humanitarian assistance resources which were initially committed to be given to third countries, but they were eventually used to cover the needs of migrants in the EU.

- Thus, a **“monetisation” of legal and political issues regarding asylum and migration policies is being identified**. A very characteristic example is the EU-Turkey “Statement”, due to the problems that it causes with regard to its legal nature and its contents (especially considering Turkey’s poor record of adhering international law on respecting human life and dignity), as well as to its voluntary (on behalf of the EU) dependence of the successful implementation of a European policy regarding the migration crisis on the action of a third country, having as the most basic point the funding of this country by the EU. Taking into account the judicial development on the legal nature of the “Statement”, which entails the conclusion that this is not even an act of the EU, there are serious concerns on the legality of providing funding to Turkey based on this particular “Statement” (lack of legal basis).
- **Establishing new funding instruments** to meet current needs under the pressure of these needs sets – as experience has shown – the **conditions of overriding the mechanisms of democratic control as well as financial control (audit)** for such instruments. If the inevitability of their establishment is verified and the existing instruments do not suffice to cover the needs, the European Commission should take the necessary action ie to undertake feasibility studies, impact assessments, ex ante evaluations etc in order to establish the resulting added value for the EU from the establishment of a new funding instrument as well as the adherence of the principles of economy, efficiency and effectiveness.
- In this direction, the European Parliament, through the discharge procedure (Art. 319 TFEU) and the European Court of Auditors must secure as much complete accountability and legality, regularity and sound financial management control as possible for the funding instruments.

# Value for money?

- Taking into account all the above reflections, it is obvious that the basic budgetary challenge caused for the EU by the refugee crisis is **not only the amount of the resources made available and spent** by the EU budget for this issue, but also **whether these resources contribute substantively to the achievement of the objectives for which they are being committed and paid**.
- Till today there is no overall evaluation of the entire financial effort of the EU in the field of tackling the refugee crisis, both in political terms as well as in budgetary terms.
- So far, the only relevant materials available are the audits, analyses and evaluations performed by the European Court of Auditors, regarding certain aspects of the variety of actions which have been included in the financing framework provided for tackling the refugee crisis.
- More specifically:

- The **first integrated audit approach** and evaluation by the European Court of Auditors regarding the EU actions about the refugee crisis **focused on the so called “hotspot approach”, in Special Report 6/2017.**
- The audit included the countries in which the hotspots were established, i.e. Greece and Italy. The aim of the hotspot approach was to provide operational support to Member States to ensure arriving migrants were identified, registered and fingerprinted, and channeled into the relevant follow-up procedures. Overall, it was found that **this approach has helped to improve migration management** in the two Member States, under very challenging and constantly changing circumstances, by increasing their reception capacities, improving registration procedures, and by strengthening the coordination of support efforts.
- The selection of the hotspot locations took into account the main entry points and the availability of existing structures. However, **setting them up took longer than planned** and the **reception facilities in both countries were not yet adequate** to properly receive (Italy) or accommodate (Greece) the number of migrants arriving, while for accommodating and processing unaccompanied minors the facilities did not meet international standards.
- The European Commission and the relevant EU Agencies supported the efforts of the two Member States by providing experts, financial and technical resources, advice and coordination. The Agencies’ capacity to provide such support was and remains very dependent on the resources offered by Member States. Additionally, **the duration of expert deployments was often very short, thereby reducing the efficiency of the deployed experts.** The new mandates for the Agencies (for instance for FRONTEX) aim at addressing these shortfalls.

- Furthermore, although standard operating procedures are an essential element for clarifying responsibilities and harmonising procedures, in particular where numerous different players are involved, as is the case for the current hotspot approach, only Italy has established hotspot standard operating procedures and applies them both in the hotspots and in other disembarkation ports functioning as hotspots, while in Greece, their adoption is still pending. **Coordination at the individual hotspot level is still fragmented** and although it has been established that the central authorities in the two Member States are responsible for the overall management of the hotspots, at least in Greece, they have yet to take on this responsibility in full. Monitoring and reporting by the European Commission on the progress and problems at the hotspots has been regular and extensive.
- In both countries, **the hotspot approach ensured** that most of the arriving **migrants were properly identified, registered and fingerprinted and that their data were checked** against relevant security databases. In this respect, the hotspot approach contributed towards an improved management of the migration flows. The hotspot approach further requires that migrants be channeled into appropriate follow-up procedures, i.e. a national asylum application, relocation to another Member State (where appropriate) or return to the country of origin (or transit). **Implementation of these follow-up procedures is often slow and subject to various bottlenecks**, which can have repercussions on the functioning of the hotspots.
- The European Court of Auditors recommended to the European Commission to **assist the Member States in improving the hotspot approach** as regards hotspot capacity, the treatment of unaccompanied minors, the deployment of experts and roles and responsibilities in the hotspot approach.



- Another Special Report being drafted by the European Court of Auditors refers to the **Facility for Refugees in Turkey**, established on 1 January 2016 upon the relevant call of the European Council, with a budget of €3 billion, made up of €1 billion from the EU budget and €2 billion from national contributions from the Member States.
- The Facility is a **coordination mechanism to assist Turkey in addressing the immediate humanitarian and development needs of the refugees and their host communities**, national and local authorities in managing and addressing the consequences of the inflow of refugees. It was established with the specific objectives **of coordinating and streamlining actions financed** from the EU's budget and from bilateral contributions by Member States, and **enhancing the efficiency and complementarity of support provided** to refugees and host communities in Turkey. The Facility provides funds for humanitarian and non-humanitarian assistance.
- The audit aims at examining whether the Facility provides effective support to refugees hosted in Turkey, by assessing the set-up and functioning of the Facility as a whole, focusing on its management (i.e. the coordination, administrative arrangements, functioning and monitoring) and the results achieved by humanitarian actions supported under the Facility.
- Interestingly enough, it has been **decided by the Council**, before any results from the audit being made available, **to provide additional funding to the Facility**. This initiative is based on the commitment undertaken by the EU under the EU-Turkey Statement of 18 May 2016 **to provide a second installment of €3 billion for the Refugee Facility before the €3 billion initially allocated has been fully used up – and thus before any evidence of its efficient and effective use has been provided**.
- The European Court of Auditors Special Report is anticipated **by the end of 2018**.

- Finally, another aspect of EU actions with regard to the refugee crisis which has been examined by the European Court of Auditors is **the integration of migrants from outside the EU into the European society**.
- This issue had also been assessed by the European Court of Auditors **before the eruption of the refugee crisis** in 2015. More specifically in its **Special Report 22/2012**, it audited whether **the European Integration Fund and the European Refugee Fund** contribute effectively to the integration of third-country nationals. It found that that **it was not possible for the Commission or Member States to assess the contribution of the funds to integration** because the Member States **did not set proper targets or indicators** for their annual programmes, and the relevant reports did not provide enough information for the Funds to be evaluated or steered. At the level of individual projects, **the sample under audit showed positive results but these could not be linked to success at a higher level**, not least because the implementation rate was low in the 2007 and 2008 national annual programmes and later programmes were not yet been completed.
- The effectiveness of the Funds has been **hampered by the design of the programmes, which were fragmented, burdensome and inadequately coordinated with other EU funds**. The splitting of funding for target groups which had similar needs created problems for authorities and beneficiaries, as it caused the establishment of multiple chains of fund management and controls, thus leading to excessive administration, out of proportion to the size of the funds involved. The insufficient coherence and complementarity with other EU funds caused overlaps, missed opportunities for synergy and risks of double-funding. The relevant legislation was delayed significantly thus causing further delays to the submission of programmes, the establishment of implementing rules and the provision of guidance.

- **After the eruption of the refugee crisis**, in a briefing note dated **17.5.2018**, the European Court of Auditors, after collecting a variety of data on actions related to migrants' integration, has identified the following challenges:
  - 
  - **Challenge 1: Reducing delays in the start of integration**
  - The earlier integration starts, the more likely it is to be successful. Factors that delay the start to the integration process (such as when migrants move on to another EU Member State because of, for example, divergences in national rules regarding entry and residence conditions, or long waiting periods to process applications) may affect the effective integration of migrants into society
  - **Challenge 2: Guaranteeing equal rights and non-discrimination**
  - Equal rights and non-discrimination are important factors in helping migrants integrate successfully. Ineffective anti-discrimination policies towards migrants might hinder their successful integration into society.
  - **Challenge 3: Sound and comprehensive assessment of needs and funding**
  - Integration policies require a sound and comprehensive assessment of migrant and host society needs and funded by adequate resources made available when needed. However, even now, the exact overall amount of the resources provided for this objective is not known. Without a robust estimate of the funding needed at national level and how EU funding can complement national interventions, there is a risk that policies might be ineffective.

- **Challenge 4: Commitment of Member States to implement the Action Plan**

- In 2016, the European Commission developed an Action Plan on integration with 52 measures to be undertaken at EU level. As of December 2017, 23 actions had not been completed. The effective implementation of Action Plan measures relating to Member States depends on their commitment. The lack of monitoring of these measures by the Commission may limit its ability to provide additional support to Member States.

- **Challenge 5: Supporting all migrants across all relevant policy areas**

- Most Member States have established integration policies in various frameworks. However, such integration policies at national level require a comprehensive framework to support all migrants across all relevant policy areas. Integration policies that do not address all relevant policy areas for all groups of migrants may lead to less effective integration.

- **Challenge 6: Effective monitoring of integration outcomes to measure progress and adapt policies if needed**

- Most Member States still do not have a complete picture on the number of migrants receiving assistance or the amounts spent for integration actions. Monitoring integration outcomes allows stakeholders to measure the progress in the implementation of integration policies, identify limitations and adapt policies if needed. Lack of good data or inappropriate monitoring may prevent measures from being redirected and/ or policies from being redesigned to address the real needs of migrants.

- **Challenge 7: Effective coordination of funding at EU and national level**

- It has been established that actions of the same type, focusing on the same target group, may be financed by several EU financial instruments. Without effective coordination at EU and national level, there is the risk that the complexity of funding arrangements may lead to inefficient policy implementation (less complementarity, fewer synergies, difficulties in accessing funds, risk of double funding).



# Concluding Remarks

- Based on the above findings regarding the institutional and budgetary challenges that the refugee crisis has caused to the EU, it is interesting to see if some of the lessons to be learned have been taken on board by the European Council in formulating the future stance of the EU with regard to these issues.
- In its Conclusions, after its meeting on 28 June 2018, the European Council, identified **the necessity of a comprehensive approach to migration** which combines more effective control of the EU's external borders, increased external action and the internal aspects of its policies.
- The **overall aim** has been set: to prevent a return to the uncontrolled flows of 2015 and to further stem illegal migration on all existing and emerging routes (Eastern, Central and Western Mediterranean).
- Therefore the measures included in the Operation Sophia (efforts to stop smugglers, search and rescue, support to Libyan authorities, etc) will be continued, taking into account the Italian concerns. The full implementation of the EU-Turkey Statement will be further pursued. Financial and Operational Support will be provided to Spain and other countries in view of the increase in flows in the Western Mediterranean.
- A **new approach** is being introduced, **in order to eliminate the incentive to embark on perilous journeys in the Mediterranean**: the concept of **regional disembarkation platforms** which should operate distinguishing individual situations, in full respect of international law and without creating a pull factor. On EU territory, those who are saved, will be transferred in controlled centres set up (only on a voluntary basis) in Member States, where rapid and secure processing would allow, with full EU support, **to distinguish between irregular migrants, who will be returned, and those in need of international protection, for whom the principle of solidarity would apply.**



- Also **supporting the African countries** in their efforts to achieve a substantial socio-economic transformation of the African continent building upon the principles and objectives as defined by the African countries in their Agenda 2063, has been identified as a major tool in tackling the migration problem. Additional development funding is to be provided, as well as support for enabling a substantial increase of private investment from both Africans and Europeans, in fields such as education, health, infrastructure, innovation, good governance and women's empowerment.
- In the context of the **next Multiannual Financial Framework**, the European Council underlined the **need for flexible instruments**, allowing for fast disbursement, to combat illegal migration. The internal security, integrated border management, asylum and migration funds should therefore include dedicated, significant components for external migration management.
- The **Member States maintain their competence** to ensure the effective **control of the EU's external borders** and to step up the effective return of irregular migrants, however with increased EU financial and material support, especially through the **supportive role of FRONTEX**, with its increased resources and enhanced mandate.
- As for the situation internally in the EU, **secondary movements of asylum seekers between Member States** risk jeopardising the integrity of the Common European Asylum System and the Schengen acquis. Thus **Member States should** take all necessary internal legislative and administrative measures to **counter such movements** and to closely cooperate amongst each other to that end.
- It seems that the agenda set by the European Council builds on the experience gained so far, however **the issues identified as points of concern with regard to the legality, effectiveness and efficiency of the measures adopted do not seem to have been taken into account...**



**Thank you for your attention!**