

# Migration Update

October 2023



Wilfried  
**Martens Centre**  
for European Studies

## Migration Update October 2023

The purpose of these news summaries is to provide a factual base for migration debates within the European centre-right. [Vít Novotný](#) is responsible for the selection of information items from the media, governments and social media. The value of these summaries is in the categorisation of information items and in listing those items that readers might have missed. Facts and opinions are conveyed as they are reported. Original comments are kept to a minimum. These news summaries are not subject to a formal editorial process. Niccolò Mazzocchetti and Claudia Masi contributed items and Niccolò provided material for the Judicial Observatory. Kristina Lazebna provided some material on elections. Should you have any questions or comments, please contact Vít Novotný at [vn@martenscentre.eu](mailto:vn@martenscentre.eu).

- By 30 September, more than [100,000 people](#) fled the **Nagorno-Karabakh** region. It means that almost the **entire population** of the ethnic Armenian enclave had left since Azerbaijan seized the region the previous week. In a cabinet session on 26 October, the Armenian government approved the creation of a [temporary protected status](#) for the displaced.

### Contents

TUNISIA-ITALY .....	2
Memorandum of Understanding.....	2
Italy.....	2
PEOPLE SMUGGLING .....	3
European Political Community .....	3
Ukraine-Poland .....	3
ISRAEL-PALESTINE.....	3
CHECKS AT INTERNAL BORDERS AND IRREGULAR MIGRATION .....	3
NEW PACT .....	4
Regulation on crisis situations and force majeure in the field of migration and asylum.....	4
Trilogue negotiations .....	4
ASIA.....	5
USA.....	5
NATIONAL ELECTION CAMPAIGNS .....	6
Luxembourg .....	6
Poland .....	6
JUDICIAL OBSERVATORY .....	7
Italian Court orders release of four Tunisian migrants and declares government's decree on migration unlawful .....	7

The European Court of Justice rules that the Returns Directive applies at internal Schengen borders..... 7

MARTENS CENTRE PRODUCTION ..... 8

SELECT EXTERNAL PUBLICATIONS ..... 8

## TUNISIA-ITALY

### Memorandum of Understanding

On 2 October, Tunisia's president Kais Saied [rejected](#) the European Commission offer of €127m for border management that was agreed in July under the Memorandum of Understanding between the EU and Tunisia. He said that the offer “conflicts with the memorandum of understanding.”

On 5 October, the Commissioner for Neighbourhood and Enlargement, Oliver Várhelyi, [tweeted](#): ‘Tunisia formally requested payment of €60m budget support by the EU on 31 August. On this basis, the EU disbursed the payment on 3 Oct. It concerns budget support from 2021 - not linked to the EU-Tunisia MoU. Tunisia is free to cancel its formal disbursement request & **wire back**.’

On 11 October, a European Commission spokesman [confirmed](#) that Tunisia **returned** €60 million of budget support delivered by the Commission in September under a 2021 agreement. ‘Tunisia gave back the money as a sign of its dissatisfaction toward the Commission. The North African country accused the EU executive of withholding more funds it had promised under the migrant agreement. In a swipe at the EU, [FM] Ammar said that “we didn’t start wars and we didn’t plunge humanity into world wars as you did”.’

EPP Chairman Manfred Weber [criticised](#) the European left as well as Council President Charles Michel: ‘All those, especially on the left, who are now criticising the agreement must also finally answer the question of what the alternative is.’ In an interview with Germany’s Spiegel, Michel... accused Commission President Ursula von der Leyen of disrespecting the EU treaties because she negotiated the deal with Tunisia without fully involving EU countries.

### Italy

At the end of September, a court in Catania [ordered](#) three Tunisian **migrants leave the Pozzallo repatriation centre**, raising doubts about the government's recent measures [see Judicial Observatory below]. In response, PM Meloni [said](#) “I was stunned by the judge’s decision, which, for unbelievable reasons, released an illegal immigrant who had already received a deportation order, unilaterally declared Tunisia an unsafe country and opposed the measures of a democratically elected government.”

- The same judge subsequently [ordered to release](#) from detention four other migrants.

## PEOPLE SMUGGLING

### European Political Community

[According to](#) *The Guardian*, ‘the EU has joined forces with the UK and Albania to extend the fight against people smugglers across the wider continent... The plan was forged at the sidelines of the European Political Community (EPC) summit in Granada. [French President] Macron told reporters they had agreed a **new five-point plan to build on and then export to the entire membership of the EPC**, to create the first concerted continent-wide fight against people smugglers. Not only would they tackle criminals operating boats in the Mediterranean and the Channel, he said, but also organised crime in wider Europe.

- “We will enlarge this format and this approach to the EPC because it makes much more sense as we will have the coalition of the willing: members of the EU, the European Commission plus Albania and the UK and all the other countries ready to join the initiative.”

### Ukraine-Poland

The Polish Border Guard [started](#) handing over persons involved in **people smuggling** to the Ukrainian police following reports of Ukrainians fleeing across the border for fear of being **conscripted into the army**. Poland has been handing over people smuggling suspects to the Ukrainians for some time.

## ISRAEL-PALESTINE

In the wake of the Hamas attacks, Israel [closed](#) its two border crossings with **Gaza**. That has left the Rafah crossing between Gaza and Egypt as the only viable outlet to get people out of the enclave and supplies into it. The Rafah crossing remained closed, although accounts differed as to the reasons. [According to](#) *Al Jazeera*, the crossing was repeatedly hit by Israeli air raids.

On 16 October, the king of Jordan ‘[poured cold water](#) on... hopes that neighbouring Arab countries could take in Palestinian refugees fleeing the Gaza Strip. “I think I can speak here on behalf of **Jordan** ... but also our friends in Egypt: This is a red line ... no refugees to Jordan and also no refugees to Egypt.”

**Egypt’s** President Abdel Fattah el-Sissi [said](#) the ‘current war was not just aimed at fighting Hamas, which rules the Gaza Strip, “but also an attempt to push the civilian inhabitants to ... migrate to Egypt.” He warned this could wreck peace in the region. Egypt and Jordan’s refusal is rooted in fear that Israel wants to force a permanent expulsion of Palestinians into their countries and nullify Palestinian demands for statehood. El-Sissi also said a mass exodus would risk bringing militants into Egypt’s Sinai Peninsula, from where they might launch attacks on Israel, endangering the two countries’ 40-year-old peace treaty.

## CHECKS AT INTERNAL BORDERS AND IRREGULAR MIGRATION

Due to the irregular migration situation, most inter-state borders in Central Europe were [subject to controls](#) at the end of October. This included:

- Germany’s eastern and southern borders
- Poland’s southern border
- Czechia’s southern and eastern borders

- Slovakia's southern border
- Austria's southern (with the exception of Italy), eastern and northern borders
- Slovenia's southern and eastern borders

All France's borders were subject to controls due to 'new terrorist threats and external borders situation.'

The governments of Germany, Poland and Czechia [established](#) a joint task force to crack down on "inhumane smuggling crime" and illegal immigration. "Together, we want to smash the cruel business of smuggling gangs that make maximum profit from the plight of people and smuggle them across borders in a life-threatening way," according to German IM Nancy Faeser. German, Czech and Polish police will work together on each other's territories to curb illegal immigration and to identify smuggler routes.

## NEW PACT

### Regulation on crisis situations and force majeure in the field of migration and asylum.

On 4 October, 'EU member states' representatives [reached](#) an agreement on the final component of a common European asylum and migration policy. At a meeting of the Council's permanent representatives committee, member states sealed their negotiating mandate on a **regulation on crisis situations, including instrumentalisation of migration, and force majeure** in the field of migration and asylum. This position will form the basis of negotiations between the Council presidency and the European Parliament.' According to the mandate, a member state that is facing a crisis situation may request solidarity contributions from other EU countries. These contributions can take the form of:

- the relocation of asylum seekers or beneficiaries of international protection from the member state in a crisis situation to contributing member states;
- responsibility offsets, i.e., the supporting member state would take over the responsibility to examine asylum claims with a view to relief the member state that finds itself in a crisis situation;
- financial contributions or alternative solidarity measures.

[According to](#) Decode 39, 'the breakthrough came as Berlin dropped an amendment on NGOs that caused Rome to halt its approval' of the Council's negotiating mandate.

[Whereas](#) Hungary and Poland voted against the Council mandate, Austria, Czechia and Slovakia abstained. The remaining governments were in favour.

### Trilogue negotiations

According to a [Council press release](#) from 18 October, 'the Council and the European Parliament are currently engaged in so-called trilogue negotiations on

- the asylum procedure regulation,
- the screening regulation,
- the Eurodac regulation,

- the asylum and migration management regulation and...
- the regulation addressing situations of crisis and force majeure.

The Council and the European Parliament are committed to reach a political agreement by the end of this semester in order to conclude the negotiations during the current legislative term in accordance with a joint roadmap.'

## ASIA

**Pakistan's** foreign ministry has said it will carry out plans to [deport](#) all "illegal immigrants" – including **1.7 million Afghans** – in a "phased and orderly manner." Islamabad said that anyone without valid documentation would have to go back to their countries voluntarily before 31 October to avoid mass arrests and forced deportation. Mumtaz Zahra Baloch, the spokesperson for Pakistan's ministry of foreign affairs, said that the new policy was not aimed solely at Afghans. "We have been hosting Afghans refugees generously for the past four decades", since millions fled Afghanistan during the 1979-1989 Soviet occupation... "Those 1.4 million Afghan nationals who were registered as refugees in Pakistan need not worry."

## USA

US officials [said](#) on 5 October that they will resume direct deportation flights to Venezuela **and fast-track construction of new barriers** along the southern border. These moves are aimed at curbing the record number of illegal crossings into the US.

- Nearly 500,000 Venezuelans have crossed the southern border since 2020, and US authorities have had little ability to return them as a result of strained US relations with the autocratic government of President Nicolás Maduro. Biden officials who briefed reporters on the plans did not say how many deportation flights they planned to send and declined to discuss negotiations with the Maduro government. But they [said](#) they had reached a deal with the Venezuelan government.
- Only Venezuelans who arrived before 31 July are eligible for the temporary legal status.
- The southern border is [witnessing](#) a soar in illegal border crossings despite previously announced policies to penalise illegal immigration and encourage legal routes. 'The consequences Biden officials threatened to impose on those who break the law — including rapid deportations — have done little to deter families who say they are fleeing poverty or violence. For both legal and logistical reasons, families are generally not detained or deported.'

The Biden administration [announced](#) they waived 26 federal laws in South Texas to **allow border wall construction**, marking the administration's first use of sweeping executive power to pave the way for building more border barriers — a tactic used often during the Trump presidency. "There is presently an acute and immediate need to construct physical barriers and roads in the vicinity of the border of the United States in order to prevent unlawful entries." Alejandro Mayorkas, the DHS secretary, stated. In 2020, Biden [pledged](#) he would not build "another foot of wall."

## NATIONAL ELECTION CAMPAIGNS

### Luxembourg

A general election to elect 60 seats in the Chamber of Deputies took place in Luxembourg on 8 October. The election campaign was marked by an increase in asylum applications, irregular border crossings from Tunisia to Italy and the continuous arrival of Ukrainian war refugees in the country. The programme of the **Christian Social People's Party** [CSV, EPP] [stated](#) that 'Luxembourg remains an open asylum country with a realpolitik perspective'. As the country's asylum infrastructure was at its limits, return procedures need to be made more effective. 'The CSV will work to ensure that Europe does not become a walled fortress. Nevertheless, we need strengthened border protection... with open doors... for legal migration... We want to act decisively against illegal migration. Frontex must be strengthened.' Jean Asselborn [LSAP; **PES**], minister of foreign and European affairs, [stated](#) that the Grand Duchy no longer had the capacity to relocate migrants arriving in Italy, although it did so until recently. Referring to the other EU countries now having to step up, he maintained: 'Luxembourg is fully booked. Our reception facilities are full.' The head of the **Alternative Democratic Reform Party** [ADR; ECR], Fred Keup, stressed that demographic growth is one of his biggest concerns for the future of the country. His party was advocating [selective immigration](#). Results of the general election can be found [here](#).

### Poland

On 15 October, Poland held elections to both houses of parliament: the lower house, Sejm (460 seats) and the Senate (100 constituencies). Alongside the general election, a referendum took place. The referendum contained these four questions:

1. Do you support the selling off of state assets to foreign entities, leading to the loss of Poles' control over strategic sectors of the economy?
2. Do you support an increase in the retirement age, including the restoration of the increased retirement age to 67 for men and women?
3. Do you support the removal of the barrier on the border between Poland and Belarus?
4. Do you support the admission of thousands of illegal immigrants from the Middle East and Africa, in accordance with the forced relocation mechanism imposed by the European bureaucracy?

Parties campaigned jointly on issues in the general election and the referendum. The **Law and Justice party** [PiS; ECR] urged voters to respond negatively to the referendum questions 3 and 4; the party promoted similar messages in its parliamentary campaign. It advocated [against](#) the EU-level New Pact on Migration, [interpreting it](#) as leading to "illegal and externally imposed [migration](#)." The party [drew](#) a sharp distinction between the Ukrainian war refugees and "millions of illegal migrants from Africa seeking European social benefits". The **Civic Coalition** [KO; EPP, ALDE and Greens] highlighted that under the current government, Poland was accepting [large numbers](#) of refugees from Ukraine, but also immigrants from other countries. It [heavily criticised](#) the government for a scandal that unfolded as the campaign progressed. (According to reports, Polish consulates illegally [sold](#) some 250,000 visas since 2021.) The KO also proposed EU financing for the barrier on the Belarus border.

The **Third Way** coalition [TD: EPP and ALDE] campaigned against the '[automatic relocation of migrants](#)'. The election results are [here](#). The referendum results are [here](#). Turnout at the referendum did not reach the required quorum and the outcome is thus invalid.

## JUDICIAL OBSERVATORY

### **Italian Court orders the release of four Tunisian migrants and declares government's decree on migration unlawful**

On 29 September 2023, the [Court of Catania ordered the release](#) of three Tunisian migrants from the Pozzallo Repatriation Centre in Sicily. The court declared that a recent [government decree](#) (so-called 'Cutro decree') was 'unlawful in several parts'. [The court also invalidated the detention order](#), which concerned four migrants in total. The migrants had arrived from Lampedusa and applied for asylum.

The Cutro Decree introduced accelerated procedure for migrants coming from a safe country. This expedited process may apply to migrants coming from Tunisia, since the country is included in the [Italian list of safe countries](#). Detention is allowed in order to ascertain the right of entering the territory and [it can be ordered](#) if the applicant has not presented a valid passport or does not provide a financial guarantee. (The deposit of a financial guarantee represents an alternative measure to the detainment, as laid down in [Directive 2013/33](#)).

In its ruling, the Court of Catania stated a part of the Decree is unlawful as it "automatically inhibits a migrant from entering the Italian territory to apply for international protection". The judgement emphasised that the detention of migrants coming from a safe country of origin without a specific evaluation breached EU legislation. Furthermore, the Court regarded the financial guarantee of €4,938 as an "administrative burden", thus contradicting the aforementioned Directive. (The financial guarantee imposed by the Cutro Decree is expressly envisaged in the Directive, although the amount and modality of disbursement is set by national governments).

### **The European Court of Justice rules that the Returns Directive applies at internal Schengen borders**

On 21 September 2023, the European Court of Justice (CJEU) [delivered a ruling](#) in response to a request for clarification from France's Council of State. The Council of State asked whether, when a member state decides to temporarily reintroduce internal border controls, it may adopt a decision to refuse entry solely on the basis of the Schengen Borders Code, without having to comply with the common standards and procedures laid down in the 'Returns' Directive. The Council of State request came after several associations, including the association Avocats pour la Défense des Droits des Étrangers (ADDE), were challenging the legality of an order amending a law governing the entry and residence of foreign nationals and the right of asylum. This related specifically to the situation on the Italo-French border and a situation involving a third-country national who is intercepted without a valid residence permit at an authorised border crossing point.



The Court held that, in such a situation, a decision to refuse entry may be adopted on the basis of the Schengen Borders Code, but that, in order to remove the person concerned, the common standards and procedures laid down in the '[Returns Directive](#)' must still be complied with, which may 'deprive the adoption of such a decision to refuse entry of much of its usefulness.' In principle, the 'Returns' Directive applies ... where... the person concerned has been apprehended at a border crossing point on the territory of the member state concerned... A decision to refuse entry may be decided but, when seeking the removal of the person concerned, the common standards and procedures provided for by the Return Directive must still be respected'.

Since the aim of the Return Directive is to guarantee the efficient repatriation of third-country nationals (individuals from outside the EU) who lack legal reasons to remain in the EU, the repatriation must be achieved through the respect of the fundamental rights and dignity of those individuals.

### **MARTENS CENTRE PRODUCTION**

V. Šimoňák, *The Power of Opacity: EU Responses to Weaponised Migration*.  
[Martens Centre](#), October 2023

V. Novotný, 'Europe's Demography and What to Do about It', [European View](#)  
Volume 22, Issue 1, 2023

### **SELECT EXTERNAL PUBLICATIONS**

A. De Leo, *The EU-Tunisia Memorandum of Understanding: A Blueprint for Cooperation on Migration?*, The Tahrir Institute for Middle East Policy, [October 2023](#)