



Reference No: **TIGO IOR 10/2023.3788**

To the attn. of:

Mr Charles Michel

President of the European Council

Mrs Ursula von der Leyen

President of the European Commission

7 February 2023

Dear President Michel,

Dear President von der Leyen,

SPECIAL EUROPEAN COUNCIL MEETING 9-10 FEBRUARY – TIME TO ADDRESS KEY CHALLENGES IN MIGRATION IN A SUSTAINABLE AND HUMAN RIGHTS-COMPLIANT MANNER

We are writing to you in view of the Special European Council meeting taking place on 9 and 10 February 2023, where EU leaders will discuss, amongst other issues, ways in which the EU can intensify its joint actions in the field of migration policy. We would like to draw your attention to some key concerns regarding the current situation at the external borders of the EU and in the Central Mediterranean and highlight our recommendations to EU institutions and Member States to address the challenges in an effective, sustainable, and human rights compliant manner.

In the course of 2022, Amnesty International has documented pushbacks and other serious human rights violations in several EU member states. One noticeable example is represented by the systematic violations at the EU's external border with Belarus, committed by border authorities in Poland, Lithuania and Latvia, as well as by Belarussian authorities.¹ The findings encapsulate what it means to derogate from asylum laws for the purpose of dealing with migrants and asylum seekers who are being used for political purposes: arbitrary detention, denial of asylum, unlawful returns, violent pushbacks and other inhuman and degrading treatment, in some cases even amounting to torture. All three EU countries involved continue to have dedicated legislation and state of emergency rules to respond to arrivals from Belarus, which derogate from asylum and international human rights law standards and deny NGOs and journalists access to the border areas for the purposes of monitoring the situation and providing assistance to people in need. The European Commission has yet to take decisive action to address the inconsistency of the legislation adopted by Latvia,

¹ [Poland/Belarus: New evidence of abuses highlights 'hypocrisy' of unequal treatment of asylum-seekers;](#)

[Lithuania: Forced out or locked up – Refugees and migrants abused and abandoned;](#)

[Latvia: Return home or never leave the woods – Refugees and migrants arbitrarily detained, beaten and coerced into 'voluntary' returns.](#)

Lithuania and Poland with the observance of human rights and EU law, despite these measures having been in place and implemented since the summer of 2021. In this long period of time, thousands of people have been pushed back - sometimes repeatedly - to Belarus, violently abused, denied asylum or unlawfully detained and returned, in many instances in locations with strong presence of Frontex officers.

The European Commission, instead of ensuring compliance with the EU acquis, has opted to accommodate requests coming from some EU countries to change the legal framework and allow for derogation to the asylum rules in certain situations. As a result, it proposed a Regulation addressing situations of instrumentalisation in the field of asylum and migration that is both unnecessary and dangerous. If adopted, migrants and asylum seekers who are registered would be subject to de facto automatic detention for several months, with basic support provisions and without effective remedies against decisions on detention and return. The possibility to delay registration for several weeks would make many others vulnerable to unlawful removal – thus continuing, rather than addressing, the prevailing practice of pushing people back in those border areas.

Unlawful border practices are by no means confined to the EU's borders with Belarus. At Greece's land and sea borders with Turkey, violent pushbacks continue unabated, and while no credible efforts have been made to bring accountability for human rights violations, the year 2022 saw the highest numbers of dead and missing people on these routes since 2016. In 2022, Amnesty International also documented pushbacks and police brutality at the Spanish-Moroccan border in Melilla². We investigated the incident which on 24 June 2022 left at least 37 people dead and 77 more missing, while 470 were illegally expelled. The victims - refugees and migrants from sub-Saharan Africa - were met with prolonged and unlawful use of force by Moroccan and Spanish security forces.

In a year which saw the largest forced displacement of people in Europe caused by Russia's war of aggression against Ukraine – during which EU Member States and Institutions demonstrated that assisting people in a fair and dignified manner is possible when political will exists - our research findings reveal that women, men and children arriving from other countries and crises are not being treated the same way. They expose what the UN Special Rapporteur on contemporary forms of racism, xenophobia and related intolerance has called the “racialised exclusion and deadly violence deployed to keep out people of African and Middle Eastern descent, and other non-**white populations**.”³ The underlying racism of the EU's border policies is a matter that needs to be acknowledged and urgently addressed.

Amnesty International also notes with concern the growing interest of EU leaders in border walls with reiterated calls that the EU fund the construction of these barriers. We welcome the Commission's position that EU funds in support of Member States' border management measures cannot go to the building of walls. Fences and walls are ineffective, expensive and dangerous: they increase reliance on criminal groups; promote smugglers' business model and increase risks for vulnerable people. Walls are not impenetrable and divert rather than deter migrants and asylum seekers. Legally, to guarantee the right to asylum, any fence or wall must have crossing points which should be effectively accessible to those seeking protection. More often, however, there are no safe and effective ways for people to seek protection at these fortified borders and the very act of seeking safety is criminalised. This cannot be accepted, normalized, or championed by Europe.

EU leaders cannot simply continue to ignore the grave human rights violations migrants and asylum seekers are subjected to at the external borders of the EU – and the fatalities border authorities cause directly or indirectly through their action or inaction – and pursue short-sighted solutions that rely on yet more equipment, means of surveillance, erection of walls, and cooperation with rights-violating third country authorities and entities. Thousands of women, men and children drown yearly in the Mediterranean Sea, yet we continue to observe the absence of any proactive state-led rescue operation to ensure that as many lives as possible are saved; the continuous slandering and criminalization of rescue NGOs that are trying to fill the rescue gap left by Member States; and the continuing support to Libyan authorities, despite the systematic human rights abuses suffered by people intercepted at sea and returned to Libya with EU's assistance. The Commission's proposed action plans to address migration challenges in the Central Mediterranean continue to have as a central pillar reinforced cooperation with Libya, including by strengthening Libya's

² “They beat him in the head, to check if he was dead”: Evidence of crimes under international law by Morocco and Spain at the Melilla border

³ UN experts condemn the continuing lack of accountability for stark dehumanisation of African migrants at the perimeter of Europe

capacity to intercept departing migrants and asylum seekers – an approach that has led to over 100 000 people being returned to detention and torture in Libya with EU's support.

There have been calls for new codes of conduct, and other measures to hinder the life-saving work of rescue NGOs, such as those recently put in place by the Italian government which force NGO rescue ships to return to land more often and to more distant ports to disembark. This reduces significantly the capacity of NGO rescue ships to patrol the areas of the central Mediterranean where shipwrecks are more likely to occur. In relation to these and other recent measures adopted by the Italian government, we recall that under international law and standards, governments should make every effort to minimize the time survivors remain aboard assisting ships, and to this end they should cooperate with each other in providing suitable places of safety for survivors and should handle matters relating to the status of survivors only *after* having delivered them to a place of safety⁴. We are [calling](#) on Italy to urgently withdraw measures that hinder the work of SAR NGOs and increase the risk of drowning.

Amnesty International recognizes the need to ensure adequate responsibility-sharing in the provision of assistance to people disembarked following SAR operations. Indeed, in the absence of a wider reform of the Dublin system, the voluntary solidarity mechanism set up in June 2022 represents an insufficient but meaningful step in the right direction. We encourage EU Member States and Institutions to leverage and improve the existing mechanism, to ensure that as many people can promptly benefit of relocation. Similarly, efforts should be ensured to increase the number of people who can reach Europe through resettlement or other safe and regular channels.

We strongly urge the EU and its member states to stop pursuing policies that flout international law, jeopardize the rights of people on the move and undermine the EU's global creditability as a champion on human rights and rules'-based order. In particular, the European Council should call on member states to:

- Cease all unlawful, summary forced returns at the border and other abuses at EU's borders and inside the country and grant the right to an effective remedy to people who have been exposed to these violations.
- Create safe and effective ways for people to seek protection at the borders.
- Halt the practice of abusively invoking emergency measures and derogations from asylum and human rights standards to deal with migration issues that could be addressed with the ordinary tools available under EU law.
- Create the conditions to have an independent monitoring of the situation at the borders, including by granting access to borders areas to NGOs and other independent observers, who should be able to operate safely and unhindered.
- Reject the legislative instruments regarding instrumentalisation and crisis response and focus instead on increasing compliance with standards that are already in force with a view to building functioning asylum and reception systems and trust among Member States;
- Ensure the presence of adequate SAR resources in the areas of the Mediterranean where shipwrecks are more frequent, and allow SAR NGOs and other humanitarian actors to operate in a safe and enabling environment;
- Review cooperation with Libya to prioritise protection and fulfilment of the human rights of all people, including refugees, asylum seekers and migrants⁵;
- Use existing mechanisms, procedures, and create new ones where necessary, to investigate and ensure the protection and fulfilment of the rights of Black people and other people subject to discrimination at border locations where there is increasing evidence that they are being subjected to, or at particular risk of being subjected to, crimes under international law, including killings and torture and other ill-treatment.

⁴ IMO, Res. MSC.167/78, Guidelines on the treatment of persons rescued at sea, adopted on 20 May 2004

⁵ See for more details the [Plan of Action: Twenty steps to protect people on the move along the central Mediterranean route](#), by Amnesty International, ECRE and Human Rights Watch June 2021

We thank you for your attention and would welcome an opportunity to discuss your feedback and concerns.

Yours sincerely,

Eve Geddie

A handwritten signature in blue ink that reads "Eve Geddie". The signature is written in a cursive, flowing style.

Head of Office and Advocacy Director
Amnesty International – European Institutions Office