



CURRENT SITUATION

ASYLUM FLOWS: RESPONSES, CONCERNS & POSSIBLE FUTURE TRENDS

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MALTA EU 2017



OVERVIEW

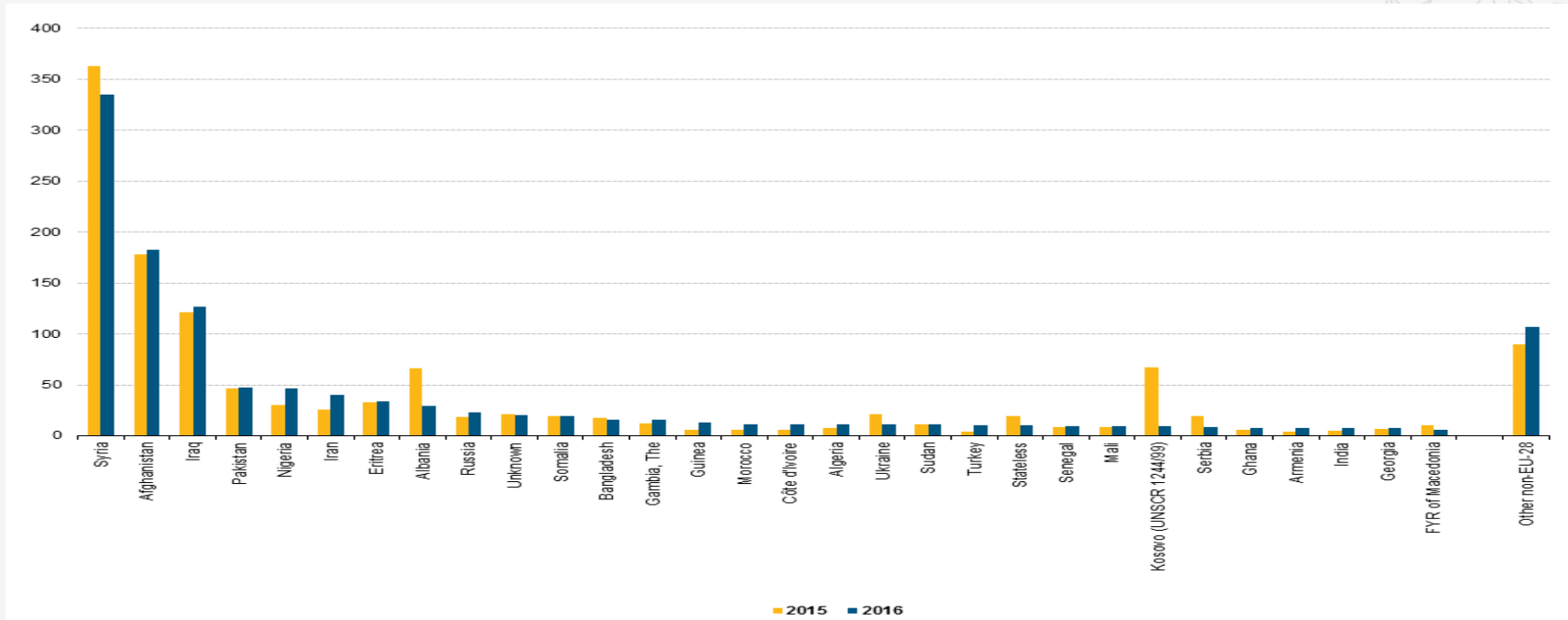


- **FACTS & FIGURES** [CURRENT SITUATION]
- **EU RESPONSE** [SOLUTIONS PROPOSED]
- **LEGAL CONCERNS** [SAR / INTERDICTION]
- **NEW TRENDS** [COERCION / CONTAINMENT]



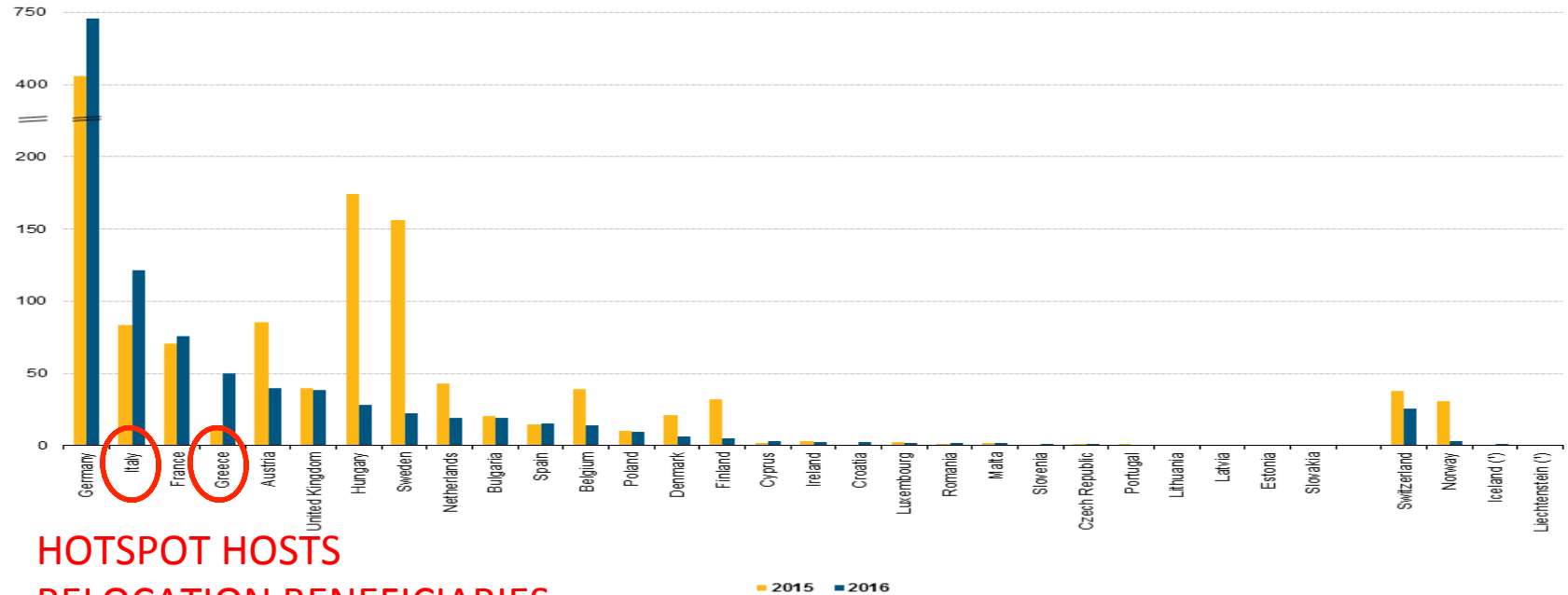
FACTS & FIGURES

MAIN NATIONALITIES OF ASYLUM APPLICANTS



Source: Eurostat (online data code: migr_asyappctza)

MAIN ASYLUM COUNTRIES EU-28



HOTSPOT HOSTS
RELOCATION BENEFICIARIES

Note: the y-axis is interrupted with a different interval above the interruption from that below it.

(*) 2015: not available.

Source: Eurostat (online data code: migr_asyappctza)

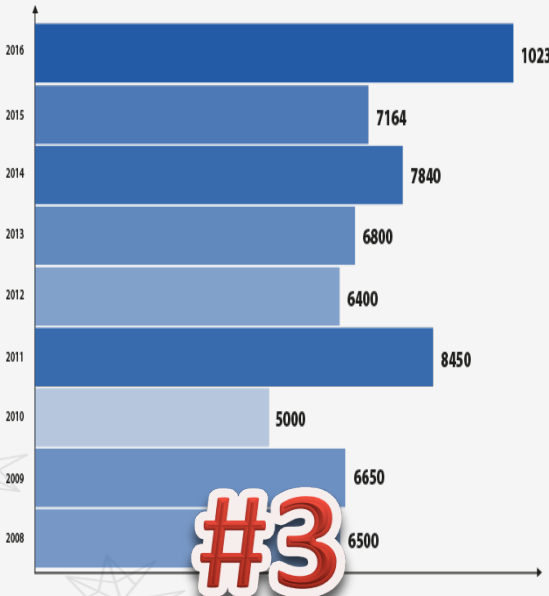
OUTCOMES & RECOGNITION RATES

	Total decisions	Positive	Of which				Rate of recognition, %	
			Refugee status	Subsidiary protection	Humanitarian reasons	Rejected	Total	Refugee and subsidiary protection status
Non-EU	350 555	213 755	89 705	99 990	24 055	136 800	61	54
Syria - (SY)	108 860	106 460	35 145	70 815	505	2 395	98	97
Afghanistan - (AF)	55 380	33 540	10 775	7 960	14 800	21 840	60	34
Iraq - (IQ)	41 465	26 090	18 005	7 720	370	15 375	63	62
Pakistan - (PK)	12 550	1 665	445	625	595	10 885	13	9
Eritrea - (ER)	10 100	9 400	5 830	3 470	100	700	93	92
Iran - (IR)	9 165	4 855	4 480	195	180	4 315	53	51
Albania - (AL)	8 435	330	85	160	85	8 110	4	3
Nigeria - (NG)	7 570	1 820	370	315	1 135	5 750	24	9
Russia - (RU)	6 935	980	645	210	130	5 955	14	12
Somalia - (SO)	6 150	4 230	1 960	1 305	965	1 920	69	53
Stateless - (ST/PS)	5 480	4 870	3 460	1 335	70	610	89	88
Bangladesh - (BD)	3 615	785	200	65	520	2 830	22	7
Serbia - (RS)	3 590	110	60	5	40	3 485	3	2
Kosovo - (XK)	3 480	275	100	110	70	3 205	8	6
Ukraine - (UA)	3 105	720	120	245	350	2 385	23	12
Mali - (ML)	3 070	980	120	345	515	2 085	32	15
India - (IN)	2 815	65	10	10	45	2 750	2	1
Lebanon - (LB)	2 690	260	90	125	45	2 435	10	8
Sudan - (SD)	2 530	1 460	1 185	255	20	1 070	58	57
MK - (MK)	2 490	20	10	5	10	2 470	1	1
Algeria - (DZ)	2 460	110	60	30	20	2 350	4	4
Georgia - (GE)	2 395	160	40	55	60	2 235	7	4
Gambia - (GM)	2 380	820	110	90	620	1 560	34	8
Azerbaijan - (AZ)	2 095	510	350	85	75	1 585	24	21
Armenia - (AM)	2 085	240	70	80	95	1 845	12	7
Senegal - (SN)	2 030	595	75	65	455	1 440	29	7
Guinea - (GN)	2 015	685	330	85	270	1 325	34	21
Egypt - (EG)	1 865	375	260	35	85	1 485	20	16
Morocco - (MA)	1 760	150	70	25	60	1 610	9	5
Ghana - (GH)	1 730	470	30	15	425	1 260	27	3
Other non-EU	30 260	10 720	5 230	4 150	1 340	19 540	35	31

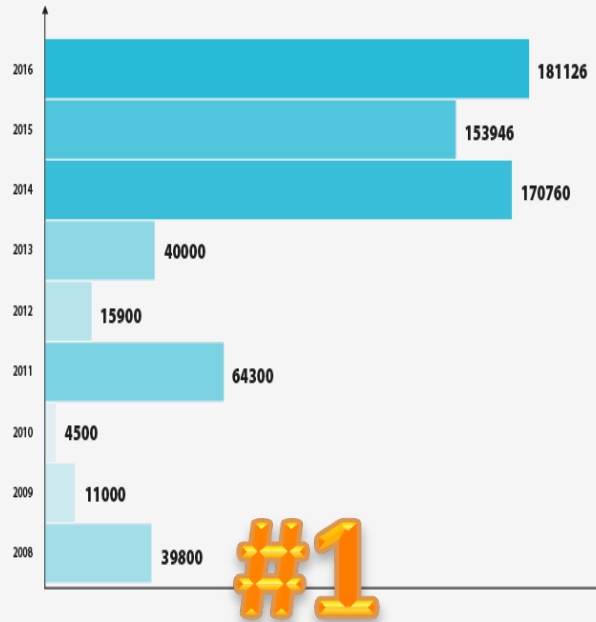
Citizenships selected here are those for which the highest number of first instance decisions was issued during Q4 2016. Rate of recognition is the share of (first instance) positive decisions in the total number of decisions at first instance. In this calculation, the exact number of decisions has been used instead of the rounded numbers presented in this table. Rates of recognition for humanitarian status are not shown in this table, but are part of the total recognition rate.

MAIN ARRIVAL ROUTES

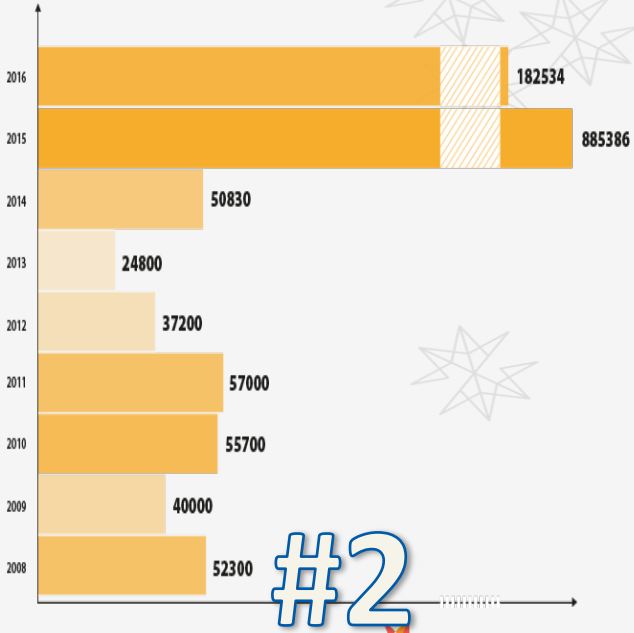
WESTERN MEDITERRANEAN



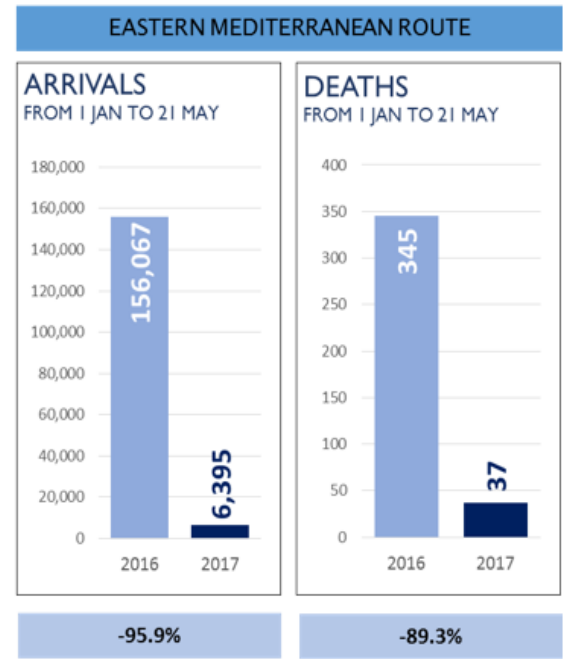
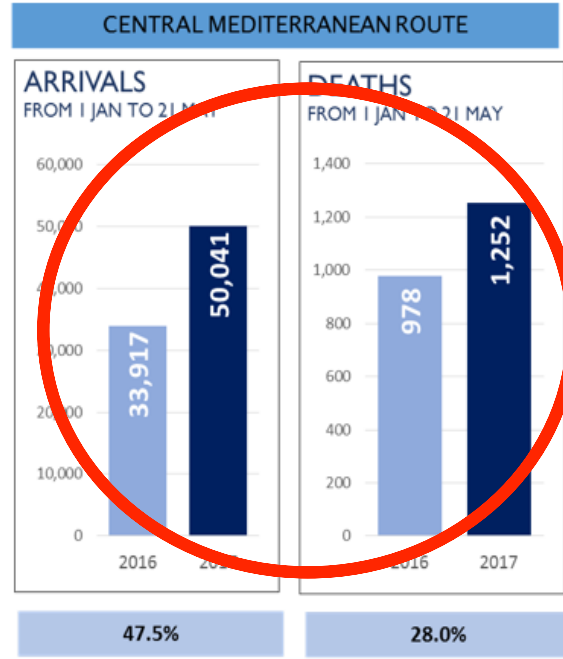
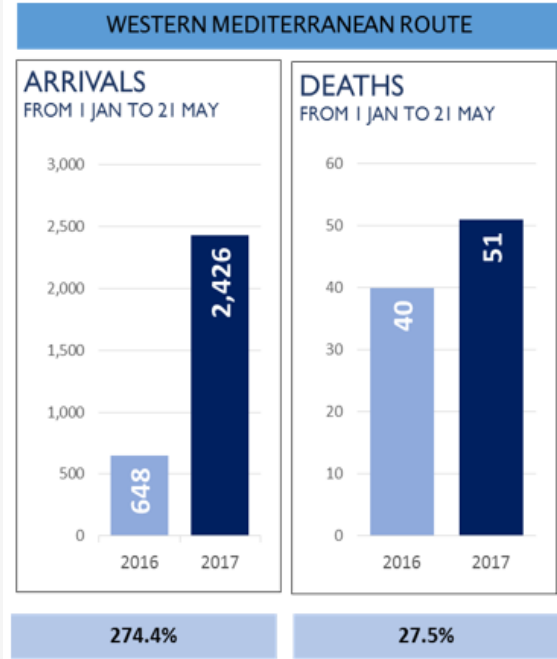
CENTRAL MEDITERRANEAN



EASTERN MEDITERRANEAN



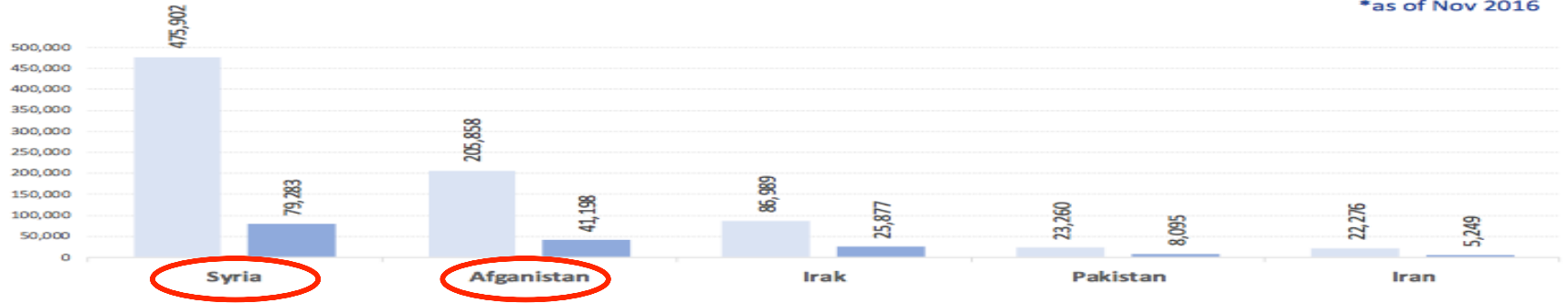
ARRIVALS & DEATHS 2016 / 2017 COMPARED



SEA ROUTE = ASYLUM ROUTE

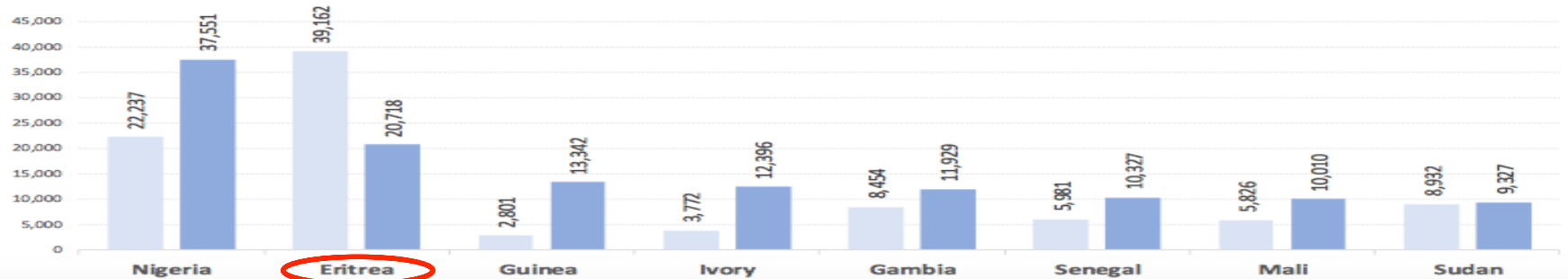
MAIN NATIONALITIES TO GREECE

■ 2015 ■ 2016*
*as of Nov 2016



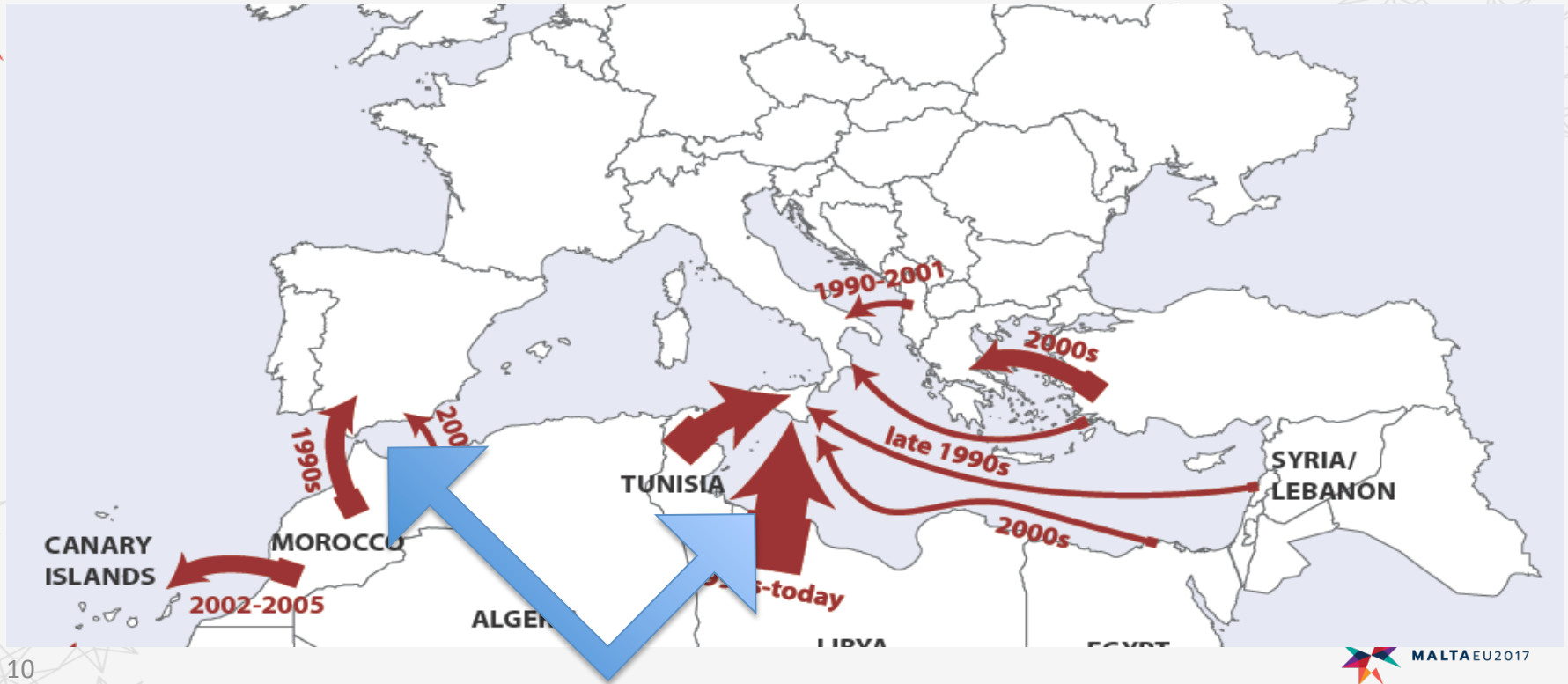
MAIN NATIONALITIES TO ITALY

■ 2015 ■ 2016

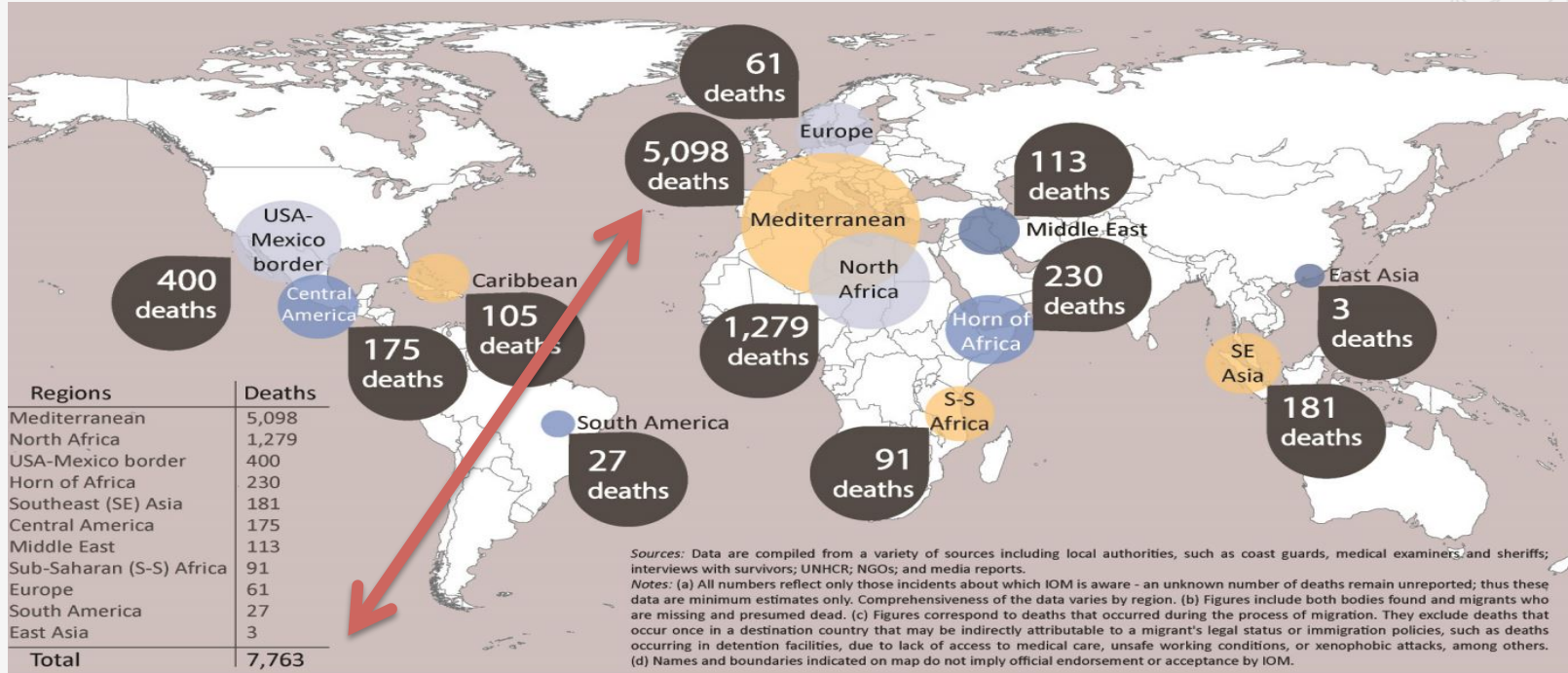


SEA ROUTE CHANGES 1990-2016

<longer & more perilous>



WORLD MARITIME DEATHS IN 2016



MEDITERRANEAN FACTS

- **The Mediterranean is the most deadly border in the world**
[over 30,000 deaths between 1998-2016 = 70% global rates
cf. Bosnian genocide = 8,373]
- **The Mediterranean route is not 'new' despite emergency rhetoric**
[first crossings registered in 1991 from Albania to Italy]
- **Mediterranean route is predominantly an 'asylum route'**
[up to 85% migrants are from top 10 EU-28 refugee nationalities]
- **Routes change & become more dangerous according to controls**

Sources: EUROSTAT; Migration Policy Centre, Policy Briefs 2014-17; and IOM, *Missing Migrants Project*



EU'S RESPONSE

SOLUTIONS PROPOSED

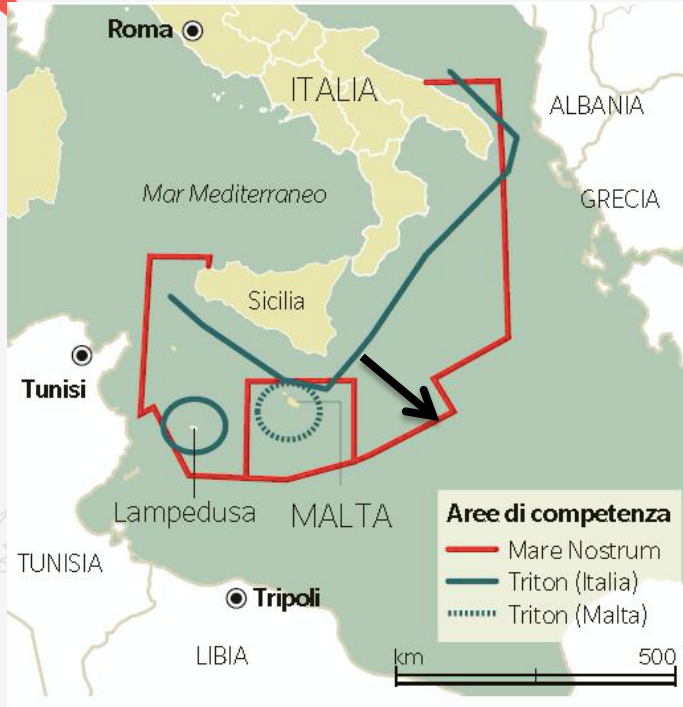


- *EU Agenda on Migration* 2015
- *Action Plan on Smuggling* 2015
- *Migration Partnership Framework* 2016



- **FRONTEX Triton 'Plus'**
- **EUNAVFOR Med Sophia**
- **EU-TURKEY Deal**

CENTRAL MED < TRITON 'Plus'



- = budget tripled (EUR 38 Mio)
- = 100 NM extra of operational area (into IT / MT SAR)
- = reinforcement of INDALO and POSEIDON JOs
- = 26 MS contributing
- = Cooperation with EUROPOL, EUROJUST and EASO
- = **"interdiction"** as **primary tool**

BUT

No specific SAR mandate (need legal amendment)

No proactive saving of lives (Leggeri, *The Guardian*)
+ no coverage of territorial waters of Libya / Tunisia

(48,000 saved in 2016 ≠ 140,000 in 2014 by IT alone)

CENTRAL MED < EUNAVFOR MED *Sophia*

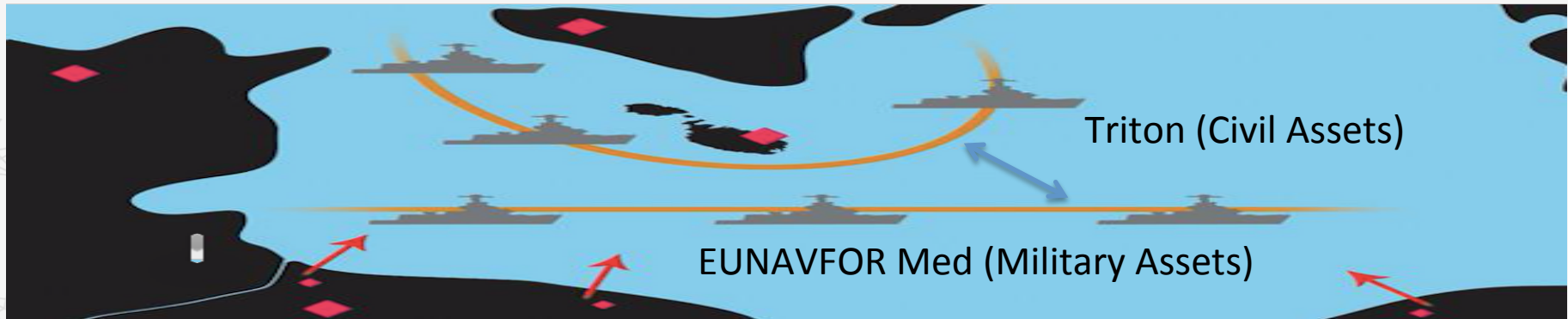
Council Dec. 2015/778 (22 June 2015 launch)

= Militarization / ATALANTA anti-piracy model (supporting FRONTEX action / 25 MS)

= Mandate: identification, **capture and disposal of smuggling vessels**

= 'based on int'l law and in partnership with Libyan authorities' <<< SeaWatch **refoulement incident 10/May/17**

- **Opposition** from APC Secretary General; Tunisian MP; UN Secretary General
- **Warning** by EU Defense Chiefs (**may destabilize Libya and region**)
- **Warning** by Frontex Head (**may simply cause route displacement**)
- **No clear "deterrence" effect** < 13% of total rescues **increased death ratio (1 in 43)**





EASTERN MED < EU-TURKEY "DEAL"

Joint Action Plan 15 Oct. 2015
 EU-Turkey Statement 29 Nov. 2015
 EU Heads Statement 7 Mar. 2016
EU-Turkey Deal 18 Mar. 2016

WHAT TURKEY GETS:

- EUR 6 bio. as Refugee Facility
- EU Accession talks reopened
- Full visa liberalization for Turkish citizens

WHAT THE EU GETS:

- **Readmission** of ALL "irregular migrants"
- Cooperation in **anti-smuggling** efforts
- Orderly access to EU via voluntary resettlement of 20,000 per year.

WHAT REFUGEES GET:

- **Decrease of arrivals** (from 3,500 to 43 daily)
- 1,487 **returned to TURKEY**
- 3,500 resettled back to EU
- Allegations of **refoulement to Syria**

EASTERN MED < MARITIME OPERATIONS

- **FRONTEX POSEIDON SEA** < Patrolling Greek waters

The Intercept (22 Aug. 16) “Shoot to Kill” policy to “stop boats”

EU Ombudsman / CoE CommHR letter to FRONTEX → Leggeri’s response: use of weapons within EBCGR for “legitimate defence”

- **NATO Mission** < Warsaw Summit (Jul. 16) < *Sea Guardian* (Nov. 16)

‘tasked to conduct reconnaissance, monitoring and surveillance of illegal crossings in the Aegean’ (NATO Press Release, Feb. 2016)

But, if SOLAS incident → rescue + ‘pull back’ to Turkey (*EUObserver*, Feb. 2016)



LEGAL CONCERNS

SAR OBLIGATIONS

○ FLAG STATE

‘Every State **shall** require the master of a **ship flying its flag** ... to **render assistance** to any person found at sea in danger of being lost and to proceed to the **rescue** of persons in distress’.

Art. 98 UNCLOS and Chap. V Reg. 10(a) SOLAS

○ COASTAL STATE

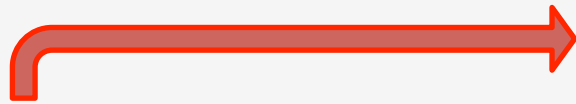
- **Coast watching + rescue** of persons in distress at sea round its coasts.
- Develop **SAR services**.
- Definition of **SAR regions**

‘Within each so defined SAR region, State responsible has **primary responsibility** for **ensuring coordination and cooperation of SAR operations** so that **survivors are effectively disembarked** as soon as reasonably practicable and **delivered to a place of safety**’.

2004 Amendments to SAR and SOLAS Conventions

In line with non-refoulement > IMO Guidelines / Art 4 MSR

HUMAN RIGHTS / REFUGEE LAW OBLIGATIONS



ICCPR, CAT, RC, CFR

Right to **leave** any country including one's own

Art. 12(2) ICCPR, Art. 2 Prot. 4 ECHR

Right seek and obtain **asylum** form persecution

Art. 14 UDHR, Art. 18 CFR

Right to **life** < **UNCLOS** / **SAR** / **SOLAS**

Art. 6 ICCPR, Art. 2 ECHR, Art. 2 CFR

Right to protection from **refoulement**

Arts. 7 ICCPR, Art. 3 CAT, Art. 19 CFR

Prohibition of **ill treatment**

Arts. 7 ICCPR, Art. 1 ff CAT, Art. 3 ECHR

Prohibition of arbitrary **detention** [incl confinement at sea]

Art. 9 ICCPR, Art. 31(2) RC, Art. 5 ECHR

Right to a fair trial < access to **procedures**

Arts. 7 ICCPR, Art. 3 CAT, Art. 13. ECHR

Right to effective **remedies** < appeal if negative decision

Art. 2 ICCPR, Art. 14 CAT, Art. 47 CFR

HUMAN RIGHTS / REFUGEE LAW OBLIGATIONS

PERSONAL

Everyone

= including refugees & migrants

MATERIAL

Cumulating int'l standards

= IRL + IHRL obligations taken together

TERRITORIAL

Both inside State territory & abroad !

= Wherever EU law applies and / or MS exercise 'effective control' either *de jure* or *de facto*

ECTHR, *Hirsi v Italy*, 23 Feb. 2012

CAT, *Sonko v Spain*, 25 Nov. 2011

CAT Committee, General Comment No. 2

HRC, *Munaf v Romania*, 30 Jul. 2009

HRC, General Comment No. 31

ICJ, *Wall Case* [2004] ICJ Gen. List No. 131

SCOPE OF APPLICATION ?



TRENDS & PERSPECTIVES

LATEST TRENDS

- **CONTACTLESS PRE-EMPTION** > multi-actor blockades (NATO / EUNavfor)
- **PULL-BACKS** > capacity building ? (EUBAM / IT-Libya MoU / EU-Turkey deal)
- **CRIMINALISATION OF HUMANITARIAN ASSISTANCE** > (*Sophia* Rep. Jan-Oct 16)
- **'SHOOT-TO-KILL' / NON-RESCUE POLICIES** > part of 'war on smugglers'
- **PRE-EMPTION** > Migration Partnership Framework (Mali / Niger / Libya / Turk)



FAILURE TO ACKNOWLEDGE...



ASYLUM ROUTE CANNOT BE CLOSED

HALTING FLOWS = LEGALLY UNTENABLE &
COUNTER-PRODUCTIVE IN PRACTICE

**RIGHT TO ASYLUM MUST BE
RESPECTED, PROTECTED** (ART 18 CFR)

OPENING CHANNELS **OF SAFE & LEGAL
ACCESS TO PROTECTION IN EUROPE**

= BEST TO DISMANTLE SMUGGLING
BUSINESS & END DEATHS AT SEA

= BEST TO COMPLY WITH PIL / EU LAW

THANK YOU FOR YOUR ATTENTION!

QUESTIONS / COMMENTS ?

MORE INFO:

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