REPORT

on human rights protection and the EU external migration policy
(2020/2116(INI))

Committee on Foreign Affairs

Rapporteur: Tineke Strik
MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

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The European Parliament,

– having regard to the Universal Declaration of Human Rights of 1948, and in particular Articles 13 and 14 thereof,
– having regard to the Convention Relating to the Status of Refugees of 1951 and the additional protocol thereto,
– having regard to the International Covenant on Civil and Political Rights of 1966 and to the International Covenant on Economic, Social and Cultural Rights of 1966 and their additional protocols,
– having regard to the International Convention on the Elimination of All Forms of Racial Discrimination of 1966,
– having regard to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984, in particular Article 3 thereof, and to the additional protocol thereto,
– having regard to the Convention on the Rights of the Child of 1989 and the additional protocols thereto,
– having regard to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 1990,
– having regard to the International Convention for the Protection of All Persons from Enforced Disappearance,
– having regard to the UN Palermo Protocols on Human Trafficking and Migrant Smuggling,
– having regard to the Rome Statute of the International Criminal Court,
– having regard to the report of the United Nations Secretary-General of 3 August 2015 on the promotion and protection of human rights, including ways and means to promote the human rights of migrants,
– having regard to UN General Assembly Resolution 71/1 of 19 September 2016 on the New York Declaration for Refugees and Migrants,
– having regard to UN General Assembly Resolution 72/179 of 19 December 2017 on the protection of migrants,
– having regard to the work of various international human rights mechanisms, including the reports of the UN Special Rapporteur on the human rights of migrants, notably his
follow-up to the regional study on the management of the external borders of the European Union and its impact on the human rights of migrants of 8 May 2015, and the report on the right to freedom of association of migrants of May 2020, and of other Special Rapporteurs, to the Universal Periodic Review and to the work of other treaty bodies,

– having regard to the work and reports of the Office of the High Commissioner on Human Rights (OHCHR), including the Recommended Principles and Guidelines on Human Rights at International Borders and the Report on the Situation of Migrants in Transit,

– having regard to the Global Compact for Safe, Orderly and Regular Migration and the Global Compact on Refugees, adopted by the UN General Assembly in 2018,

– having regard to the Joint Guidance Note on the Impacts of the COVID-19 Pandemic on the Human Rights of Migrants of 26 May 2020 by the UN Committee on the Protection of the Rights of All Migrant Workers and Members of their Families and the UN Special Rapporteur on the human rights of migrants,

– having regard to the Dhaka Principles for Migration with Dignity,

– having regard to Article 21 of the Treaty on European Union,

– having regard to Articles 79 and 80 of the Treaty on the Functioning of the European Union,

– having regard to the EU Charter of Fundamental Rights,


– having regard to the relevant reports of the European Union Agency for Fundamental Rights,

– having regard to the New Pact on Migration and Asylum proposed by the Commission on 23 September 2020,

– having regard to the Council conclusions on the EU Action Plan on Human Rights and Democracy 2020-2024, and the annexed EU Action Plan on Human Rights and Democracy 2020-2024, as agreed by the Council on 17 November 2020,


– having regard to the Commission communication of 18 November 2011 on the Global

Approach to Migration and Mobility (GAMM) (COM(2020)0743),

– having regard to the Commission communication of 7 June 2016 on establishing a new Partnership Framework with third countries under the European Agenda on Migration (COM(2016)0385),

– having regard to the Commission Staff Working Document of 30 April 2014 on a rights-based approach, encompassing all human rights for EU development cooperation (SWD(2014)0152),

– having regard to the Commission communication of 23 September 2020 on a New Pact on Migration and Asylum (COM(2020)0609),

– having regard to the Malta Declaration by the members of the European Council on the external aspects of migration: addressing the Central Mediterranean route, of 3 February 2017,


– having regard to the Joint Way Forward agreement on migration issues between Afghanistan and the EU, signed on 3 October 2016,

– having regard to the EU-Turkey statement of 18 March 2016,

– having regard to other informal arrangements, in particular those with The Gambia (Good Practices on Identification and Return, which entered into force on 16 November 2018), Bangladesh (Standard Operating Procedures, agreed in September 2017), Ethiopia (Admission Procedures, agreed on 5 February 2018), Guinea (Good Practices, in force since July 2017) and Côte d’Ivoire (Good Practices, in force since October 2018),

– having regard to its previous resolutions on migration-related issues, in particular those of 25 October 2016 on human rights and migration in third countries, of 17 December 2014 on the situation in the Mediterranean and the need for a holistic EU approach to migration, of 29 April 2015 on the latest tragedies in the Mediterranean and EU migration and asylum policies, and of 12 April 2016 on the situation in the Mediterranean and the need of a holistic EU approach to migration,

– having regard to its resolution of 5 July 2016 on the fight against trafficking in human

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beings in the EU’s external relations⁶,

– having regard to various reports by civil society organisations on the human rights situation of migrants,

– having regard to the Commission communication of 23 September 2020 entitled ‘Commission Guidance on the implementation of EU rules on definition and prevention of the facilitation of unauthorised entry, transit and residence’ (C(2020)6470),

– having regard to Rule 54 of its Rules of Procedure,

– having regard to the opinions of the Committee on Development and the Committee on Civil Liberties, Justice and Home Affairs,

– having regard to the report of the Committee on Foreign Affairs (A9-0060/2021),

A. whereas migration is a global phenomenon amplified by globalisation, rising conflicts, inequalities, climate change and environmental degradation; whereas gradual, normative development within the modern international human rights framework of the rights of refugees and migrants, independently of their legal status, represents a source of progress and collective pride for humanity; whereas, however, migrants, and in particular forcibly displaced persons, remain among the most vulnerable and disadvantaged groups worldwide and continue to face violations of their rights; whereas women, children, elderly and people with disabilities are among the most vulnerable migrants; whereas for many individuals migration continues to be a human journey marred by suffering, discrimination and violence; whereas thousands of migrants have lost their lives on their migration route;

B. whereas for the European Union and its Member States migration has been and will continue to be a challenge and opportunity; whereas Member States whose geographical location places them on the front line are bearing a disproportionate share of responsibility; whereas responsibility must go hand in hand with solidarity; whereas the European Union, as a historic region of both emigration and immigration and as a community united by founding values of human dignity, freedom and human rights, and as one of the worlds’ largest donors promoting sustainable development, supporting displaced persons, addressing the drivers of migration and working through multilateral forums towards finding durable solutions, has a particular duty to respect, protect and promote the rights of migrants, notably in its external dealings; whereas the human dignity of all migrants must be at the heart of all EU policies on this matter;

C. whereas a comprehensive approach to migration and the asylum system entails addressing the external dimension of the EU migration policy; whereas the impact of this external dimension largely depends on joined-up action at EU level and active coordination of activities with external partners;

D. whereas the European consensus on development adopted in June 2017 highlights that well-managed migration and mobility can contribute positively to inclusive growth and

sustainable development in line with the 2030 Agenda

E. whereas human rights violations, violations of international humanitarian and/or refugee law, such as non-refoulement, pushbacks and violent attacks against migrants, arbitrary and indefinite detention under inhumane conditions, exploitation, torture and other ill-treatment including rape, disappearance and death, are increasingly being reported globally, including at EU external borders; whereas Member States have an obligation to respect Union, human rights and international law, humanitarian and refugee law; whereas the Commission has to ensure that Member States fulfil their humanitarian and human rights obligations, and has to launch infringement procedures in case the latter are not met; whereas the Commission has yet to act on proven or alleged cases of pushbacks;

F. whereas rescue at sea is a legal obligation under international law, in particular according to Article 98 of the United Nations Convention on the Law of the Sea, which requires that assistance is rendered to any person in distress at sea; whereas the enhancement of border management capacities and fighting smuggling and trafficking should not to be used to criminalise migrants, nor those assisting them; whereas the Commission has invited the Member States that have not already done so to use Article 1(2) of Directive 2002/90/EC (Facilitation Directive);

G. whereas the Commission’s communication on the Global Approach to Migration and Mobility (GAMM) of 2011 refers to a migrant-centred approach, in which human rights are said to occupy a central place, with the aim of strengthening ‘respect for fundamental rights and the human rights of migrants in source, transit and destination countries alike’;

H. whereas the Commission communication of 7 June 2016 on establishing a new Partnership Framework with third countries under the European Agenda on Migration, which builds on the GAMM principles, stresses that migration issues are at the top of the EU’s external relations priorities; whereas this framework calls for intensified cooperation with third countries, in particular those from European neighbourhood, through ‘partnerships’ aiming to ensure cooperation on migration management, to effectively prevent irregular migration and readmit irregular migrants, including with positive and negative incentives stemming from different policy elements within EU competence, including neighbourhood, development assistance, trade, mobility, energy, security and digital policies, all leveraged towards the same objective; whereas all such ‘partnerships’ need to have a clear legal basis;

I. whereas in its 2016 communication the Commission outlined three main objectives for cooperation with third countries: saving lives in the Mediterranean sea, increasing the rate of returns to countries of origin and transit, and enabling migrants and refugees to stay close to home and to avoid taking dangerous journeys; whereas the 2016 Communication mentions addressing irregular migration as a priority for the Union and introduces ‘the less for less approach’, whereby the Commission expresses its readiness to use all EU tools and instruments, with the exception of humanitarian aid, as incentives to achieve cooperation from third countries on readmission and border control;
J. whereas the fight against migrant smuggling is a common challenge that requires cooperation and coordination with third countries; whereas the new EU Action Plan against migrant smuggling aims to promote cooperation between the EU and third countries through targeted partnerships to counter migrant smuggling as part of broader partnerships with key third countries; whereas Europol plays a key role in the fight against migrant smuggling;

K. whereas cooperation with third countries is essential to prevent and combat trafficking in human beings; whereas migration routes may be exploited by human trafficking networks; whereas trafficking in human beings has a disproportionate impact on women and girls, who constitute the overwhelming majority of victims of trafficking and suffer violence and exploitation along their migration route; whereas measures taken against human trafficking should not adversely affect the rights of victims of trafficking, migrants, refugees and persons in need of international protection;

L. whereas since 2016 the EU and some individual Member States have multiplied the number of informal agreements and arrangements with third countries, aiming to strengthen their operational capacities in border control and management, and the fight against human trafficking; whereas these agreement and arrangements also cover effective return and readmission with third countries, including Joint Migration Declarations, Memoranda of Understanding, Joint Ways Forward, Standard Operating Procedures and Good Practices as well as police cooperation agreements; whereas, similarly to formal readmission agreements, such informal arrangements affirm states’ commitments to readmitting their nationals (or others) and establish procedures to carry out returns in practice; whereas since 2016, the EU has concluded at least 11 informal agreements but only one new readmission agreement; whereas informal agreements between the EU and third countries do not provide a predictable policy or any stable and coherent statutory framework provisions on irregular migration;

M. whereas in its communication on the new Pact on Migration and Asylum, the Commission reiterated that the internal and external dimensions of migration are inextricably linked, and that tailor-made comprehensive and balanced migration dialogues and partnerships with countries of origin and transit is essential in order to address valuable objectives for both sides, such as the main drivers of migration, combating migrant smuggling, support for refugees residing in third countries and supporting well-managed legal migration; whereas as stated by the Commission communication on the New Pact, engagement at regional and global level is fundamental to complementing such dialogues and partnerships; whereas it emphasised, furthermore, that in the framework of comprehensive partnerships with third countries migration should be built in as a core issue and linked to other policies, such as those relating to development cooperation, security, visas, trade, agriculture, investment and employment, energy, environment and climate change, and education;

N. whereas the EU Action Plan on Human Rights and Democracy 2020-2024 commits the EU and its Member States to ‘advocate for the specific protection to which migrants, refugees, and internally displaced and stateless persons are entitled’; whereas this Action Plan promotes ‘non-discriminatory access to social services, including quality and affordable healthcare and education (also online), and build[ing] practitioners’ capacity to respond to the specific needs of (...) migrants [and] refugees’, and
O. whereas, according to the UNHCR, women account for around 48% of the refugee population in the world, and for a high proportion of vulnerable asylum seekers; whereas the EU’s Gender Action Plan III commits the EU to ensuring that ‘the human rights of migrant women and girls are fully realised through gender-responsive migration policies, programmes and laws, and gender-responsive migration governance at global, regional and national levels are reinforced’; whereas gender-responsive migration policies would ensure the realisation of the rights of women, girls and LGTBIQ+ persons, and protection against potential violence, harassment, rape and trafficking;

P. whereas the 2015 report of the former UN Special Rapporteur on the human rights of migrants notes shortcomings in the EU’s approach to migration due to its lack of transparency and clarity, and to the weak status of many of the agreements reached in this framework, which in his view generally lack monitoring and accountability measures; whereas the Special Rapporteur also concludes that there are few signs that mobility partnerships have resulted in additional human rights or development benefits, while the overall focus on security and the lack of policy coherence within the approach as a whole create a risk that any benefits arising from human rights and development projects could be overshadowed by the secondary effects of more security-focused policies;

Q. whereas UN human rights experts and civil society organisations have warned that the COVID-19 pandemic is having serious and disproportionate effects on migrants and their families globally; whereas they have called on states to protect the rights of migrants and their families, regardless of their migration status; whereas the pandemic has extended the period of examination of asylum applications;

R. whereas upholding freedom of movement and the right to work is key to allowing migrants to become self-reliant and helps further their integration; whereas intra-regional migration is an important element of these cross-border economic patterns;

I. The migration policy framework and its external dimension

1. Highlights that, alongside their Treaty-based obligation to uphold the values of respect for human dignity, the rule of law and respect for human rights and international law in all its external dealings, the EU and its Member States have human rights obligations towards third-country nationals (TCNs) when cooperating on migration with third countries and other non-EU actors;

2. Stresses that these obligations require not only the recognition of the applicability of the relevant standards, but also appropriate operationalisation through detailed and specific instruments that allow for effective protection and safeguards in practice as well as through a human rights-based approach to the entire migration policy cycle, with a particular focus on migrant women and unaccompanied children;

3. Is concerned about the increasing number of - and lack of protection for -
unaccompanied minors travelling through irregular migration pathways; highlights in particular the lack of effective monitoring and reporting by EU agencies and Member States on the protection of unaccompanied minors; calls on the EU to ensure that Member States and third countries report on the mechanisms applied to protect the rights of children in accordance with the UN Convention on the Rights of the Child;

4. Recalls that, in compliance with Articles 3(5) and 21 of the TEU and the Charter of Fundamental Rights, the EU and, when applying EU law, the Member States must uphold human rights in their external and extraterritorial actions, agreements and cooperation in the areas of migration, borders and asylum, including the right to life, liberty, the right to asylum, including the individual assessment of asylum applications with appropriate guarantees in accordance with international law, the right to human dignity and security, the protection from enforced disappearance, the prohibition of torture and ill-treatment, slavery and forced labour, the right to the protection of personal data, protection in the event of removal, expulsion or extradition, freedom of religion, belief, thought and conscience, and the obligation to take the interests of the child as a primary consideration as well as to adopt a gender-sensitive approach; recalls, further, that they must ensure non-discrimination and procedural guarantees such as the right to an effective remedy as well as the right to family reunification, and prevent separating children from their parents or legal guardians;

5. Observes that the Commission has yet to evaluate the impact of the implementation of its successive migration policy frameworks, in particular the GAMM and the new Partnership Framework, on the human rights of TCNs as well as the human rights impact of EU cooperation on migration with third countries, including the impact of EU support for partner countries’ border and security forces; insists on the need to carry out such a review systematically and in a comprehensive, inclusive and public format with a view to ensuring the full human rights compliance of the EU’s external migration policy;

6. Notes with great concern the absence of operational, reporting, monitoring, evaluation and accountability mechanisms for individual cases which track and respond to potential violations, as well as the lack of effective judicial remedies for persons whose rights are allegedly violated as a consequence of informal EU agreements and financial cooperation;

7. Reiterates that for the Union's policy on migration to function properly, the EU must increase its external cooperation with countries of origin and work to ensure the sustainable and effective readmission of returnees; calls for the EU to ensure that readmission agreements and agreements for cooperation on border management are only concluded with third countries that explicitly commit to respecting human rights, including the principle of non-refoulement and the rights enshrined in the UN Refugee Convention; calls for the EU to ensure that this cooperation does not lead to violations of those rights, and offers operational means to ensure effective accountability if violations occur;

8. Notes that most of the 18 official EU readmission agreements (EURAs) concluded to date include the readmission of third-country nationals to a transit country; underscores the fact that returns to transit countries entail the risk of potentially violating the human
rights of returnees; supports the recommendation made in the Commission’s evaluation of EURAs in 2011 that the EU should always first try to readmit a person to their country of origin as a matter of principle, to the extent that circumstances allow it;

9. Calls on the Commission to ensure transparent risk assessments performed by independent EU-bodies and experts, such as the EU Agency for Fundamental Rights, on the impact of any formal, informal or financial EU cooperation with third countries on the rights of migrants and refugees, including women, on local human rights defenders and civil society working to defend these rights, and, to the extent possible, on the impact that such cooperation would have on the wider population in the country affected by it in terms of access to rights, contribution to human security and peace, and sustainable development; calls on the Commission to set implementation guidelines for EU agencies and Member States before entering into cooperation with third countries; calls in this respect for particular vigilance in relation to countries which are experiencing ongoing or frozen conflicts and face increased risks of human rights violations; calls on the Commission to ensure that any EU cooperation with third countries is fully formalised in order to ensure agreements with third countries can be effectively monitored;

10. Calls on the Commission to establish an independent, transparent and effective monitoring mechanism on the basis of international law, the Charter of Fundamental Rights of the European Union and the Sustainable Development Goals, which includes periodic reports on the implementation of formal, informal and financial agreements with third countries that can potentially impact the rights of migrants and refugees and the work of human rights defenders and civil society defending these rights in third countries, such as migration partnerships, readmission agreements, and international cooperation on migration management and governance, including direct targeting of challenges connected to migration and forced displacement; stresses that such a monitoring mechanism has to be participatory and public; insists on the need to ensure the means for civil society and other interested stakeholders to be able to contribute to the work of the mechanism; stresses that such a system should contribute to ensuring accountability for human rights violations, including pushbacks violating the principle of non-refoulement; calls on the Commission to establish a follow-up mechanism which duly incorporates evaluation results and expert recommendations in the relevant agreement, arrangement or action; stresses the need for ensuring parliamentary scrutiny and democratic oversight;

11. Calls on the EU to consider ways to ensure access to justice for persons affected by measures implementing cooperation between it and third countries on migration, including through setting up an independent and accessible complaints mechanism; asks for measures to ensure that those who might suffer human rights violations can access effective legal remedies and therefore can obtain redress or reparation;

12. Notes that the implementation and funding of the EU’s external migration policy is assigned to different Commission Directorates-General and mainstreamed in the EU’s migration and asylum, as well as development and foreign policies; notes with concern that this blending of executive responsibilities has created a lack of sufficient and coherent oversight of the Commission’s activities that would enable Parliament to exert democratic scrutiny over the EU’s external migration policy; insists on the importance
of ensuring coherence, synergies and complementarities in order to avoid overlaps between the different tools;

13. Highlights the practical human rights implications stemming from the increasing number, and hence the extrajudicial nature, of informal arrangements on return and readmission, which are concluded without due democratic scrutiny and parliamentary oversight, and are not subject to judicial scrutiny; notes that the rights of asylum seekers are inherently dependent on the possibility of having human rights violations assessed by a court; urges the Commission to formulate a plan and take all necessary measures to initiate or finalise negotiations, and accordingly sign readmission agreements, to prioritise the conclusion of formal readmission agreements, thus ensuring full respect for Article 218(6) of the TFEU, and to ensure that formal EURAs exclude informal agreements; believes that Parliament must scrutinise informal agreements which include commitments on issues that fall within its competences, such as readmission, and that the Commission must be ready to undertake further action, including suspension, if these informal agreements appear to be incompatible with the Treaties; calls on the Commission to establish a general framework for the effective monitoring and evaluation of the implementation of all present and future EU readmission agreements and the inclusion therein of special monitoring provisions;

II. Human rights compliance and EU actors implementing the external migration policy

14. Notes the increased role of Frontex in practical and operational cooperation with third countries, including on return and readmission, the fight against human trafficking, the provision of training, operational and technical assistance to authorities of third countries for the purpose of border management and border control, carrying out operations or joint operations at the EU’s external borders or in the territories of third countries, and deploying liaison officers and operational staff in third countries; calls for an assessment of the needs of the Agency on a regular basis to ensure its optimal functioning; calls on the Commission to establish an independent, transparent and effective monitoring mechanism on all activities carried out by Frontex, which would be in addition to the internal complaint mechanism in place;

15. Stresses the importance of status agreements in ensuring a legal framework for cooperation between Frontex and third country border management authorities; recalls that ad hoc status agreements, subject to approval by Parliament, are required for the deployment of Frontex’s border management teams to a third country where the members of the teams will exercise executive powers; regrets that the two status agreements concluded to date do not include specific measures for the operationalisation of human rights as part of border management, and do not ensure that material support and training to third countries is not given to perpetrators of human rights violations; regrets that these agreements also fail to clearly regulate accountability for potential human rights violations, and calls for any future status agreements to include such measures;

16. Stresses that Regulation 2019/1896 requires Frontex to ensure timely, consistent, transparent, complete and accurate reporting to Parliament on its activities relating to cooperation with third countries and, in particular, those related to technical and operational assistance in the field of border management and return in third countries,
the deployment of liaison officers, and detailed information on compliance with fundamental rights; calls on Frontex to regularly inform Parliament’s Subcommittee on Human Rights, Committee on Foreign Affairs and Committee on Civil Liberties, Justice and Home Affairs about any activities involving cooperation with third country authorities, and in particular the operationalisation of human rights as part of such activities;

17. Stresses that Regulation (EU) 2019/1240 on the creation of a European network of immigration liaison officers should further improve the EU’s capacity to coordinate, cooperate and exchange information among immigration liaison officers deployed in third countries, the Commission and EU agencies, in order to respond more effectively to the Union’s priorities in the field of migration; highlights that one of the central tasks of this EU network’s Steering Board is to support the development of the capabilities of immigration liaison officers, including through developing guidelines on implementing human rights as part of their activities; calls on the Commission, through the Steering Board, to urgently draw up such human rights-based guidelines;

18. Recalls that other EU actors implementing the external migration policy in the context for example of EU naval missions, are also bound by applicable international law, and that forwarding information to authorities of third countries that ultimately results in the unlawful return of migrants and refugees to unsafe countries could be considered as assisting in human rights violations under international law; stresses that the EU’s external migration policy should not support interceptions at sea that return people to an unsafe port;

19. Recommends the extension of the mandate, competences and budget of the Fundamental Rights Agency to allow it to effectively monitor the external dimension of EU asylum and migration policies, including by issuing alerts to the relevant authorities in cases of human rights shortcomings; calls on the Fundamental Rights Agency to develop relevant tools and guidelines;

20. Notes with great concern that it is not possible to determine the identity of the majority of the people who die during the attempt to cross the Mediterranean; considers it necessary to establish a coordinated European approach in order to ensure prompt and effective identification processes, and to establish a database of those who died on their way to the EU as well of their belongings and personal items in order to provide information to their family and relatives and facilitate the identification of corpses; asks the EU and its Member States to better coordinate and improve European action in order to ensure adequate and effective search and rescue operations;

III. EU cooperation with and financial aid to third countries on migration

21. Notes the increasing use since 2016 of enhanced conditionality between development cooperation and migration management, including return and readmission; underlines that EU development cooperation and assistance must be aligned with the sustainable development goals, including in the context of gender-related actions; stresses in this regard the OECD Development Assistance Committee’s definition of official development aid and the OECD’s Development Aid Effectiveness Principles; reiterates that according to Articles 21 of the TEU and 208 of the TFEU the primary objective of
Union development cooperation policy is the reduction and, in the long term, the eradication of poverty, tackling inequality and exclusion, promoting democratic governance and human rights, and enhancing sustainable and inclusive development; underlines that such action, together with the development of stable institutions, are key to addressing the root causes of migration; calls on the Commission, therefore, to ensure that policies on development cooperation, including development assistance or bilateral or multilateral partnerships, do not contravene the principles enshrined in Article 208 of the TFEU;

22. Calls for a needs-based approach to humanitarian assistance, which should respect humanitarian principles, international human rights law, international humanitarian law, and international refugee law; stresses furthermore that making humanitarian aid and emergency aid conditional on cooperation with the EU on migration is not compatible with humanitarian principles;

23. Notes that a complete and public overview of EU funding to third countries for facilitating cooperation on migration issues remains unavailable; calls on the Commission to ensure full transparency, including by establishing a clear overview of all instruments within the EU budget used to finance cooperation with third countries in the field of migration management, including information on the amount, purpose and source of funding, as well as detailed information on any other potential support measures provided by EU agencies such as Frontex, in order to ensure that Parliament can effectively perform its institutional role exercising scrutiny of the implementation of the EU budget;

24. Highlights the objective of European financial instruments to support third countries in the development of the necessary institutional framework and capacities to manage migration in all its aspects while aligning with European and international standards; stresses the importance of allocating a substantial share of future EU funding for migration to civil society, non-governmental and community-based groups and governmental, intergovernmental, regional and local organisations active in third countries in providing assistance, protecting and monitoring the rights of migrants, supporting forcibly displaced persons and their host communities; stresses the importance of ensuring that a significant proportion of EU funding is earmarked for the improvement of human rights, international protection, and the future prospects of refugees; calls for EU financial support to create sustainable solutions that address local and regional challenges, particularly those related democratic processes and the rule of law, socioeconomic development, healthcare, education, the root causes of poverty, youth employment in countries of origin, social exclusion, gender equality, climate change, conflicts, access to services, and to promote refugee rights and enhance self-reliance;

25. Calls on the Commission to regularly and publicly report to Parliament on the funding of migration-related cooperation programmes in third countries and their human rights impact, and on the ways in which this funding has been used by partner countries, including to the working group on external financial instruments of the Committee on Foreign Affairs; deplores that Parliament is not involved in the scrutiny of emergency funds, including the EU Trust Funds (EUTF); calls for Parliament to be given a more prominent role in monitoring the impact of the use of EU financial contributions on
human rights in the third countries concerned;

26. Believes that Parliament must make full use of its powers of implementation, scrutiny and budgetary control, as well as of European Court of Auditors auditing procedures, for development funds, trust funds, facilities and other funding instruments used to meet EU policy goals related to migration, and ensure that EU funding decisions and related allocations comply with the Union’s principles of legality and sound financial management, in line with the EU’s Financial Regulation;

27. Stresses that the human rights-based approach is applicable to all pillars of the NDICI, including crisis response in the rapid response pillar; stresses once again that migration-related spending in the NDICI should indicatively be 10%, and that migration-related activities under the NDICI should concentrate on addressing the root causes of irregular migration and forced displacement, and on supporting increased engagement for facilitating safe, orderly, regular and responsible migration, as well as on the implementation of planned and well-managed migration policies and governance; highlights that the NDICI is an external instrument and there should be a clear demarcation between internal and external EU migration policies, instruments and funds; underlines that the final agreement on migration-related activities in the NDICI should be horizontally coordinated with internal EU funds as well as the Instrument for Pre-Accession Assistance (IPA) to avoid overlaps; notes that migration-related actions in crisis situations through the rapid response actions pillar should address, in particular, needs related to forced displacement, including supporting host communities, in accordance with international humanitarian law and principles; insists in this regard on the need to ensure that the 2021-2027 multiannual financial framework is accompanied by a robust human rights framework for the identification, implementation and monitoring of future migration cooperation programmes, in order to link the disbursement of EU funding to human rights obligations;

IV. The EU’s external human rights policy and migration objectives

28. Recalls the commitment of the EU and its Member States under the Global Compact on Refugees to share responsibility for the effective and comprehensive protection of refugees and to ease the pressure on host countries; stresses in this regard that the EU and its Member States should increase resettlement pledges, ensuring that resettlement is not made conditional upon the cooperation of the transit country on readmission or border control, and step up safe and legal pathways and preventing forced refugee returns from hosting countries; calls on the EU and its Member States to contribute to more structural and substantial funding of the communities and countries hosting most refugees; reiterates the importance of fully implementing the 23 objectives of the Global Compact for Safe, Orderly and Regular Migration; believes that Parliament must exercise proper scrutiny of EU implementation of both compacts;

29. Calls for the EU and its Member States to pursue a migration policy that fully reflects the human rights of migrants and refugees as enshrined in international, regional and national laws; calls on the EEAS, the Commission and the Member States to engage with third countries on the rights of migrants as an integral dimension of the EU’s human rights policy; insists that the nexus between human rights and migration should be adequately covered within the framework of bilateral EU human rights dialogues
with the relevant countries; calls on the EU Delegations in these countries to closely monitor the rights of migrants, particularly in countries of transit, as well as the rights of refugees and internally displaced persons; emphasises the urgent need for safe and legal migration and protection routes to be created and strengthened in order to guarantee human rights and avoid loss of life; insists on the need for proactive EU engagement in countries where human rights defenders and civil society and community-based organisations, including those who are protecting the lives of migrants and asylum seekers who are at risk, are under threat or are being criminalised for their legitimate work;

30. Calls for the EU to carry out a global campaign to support universal ratification of the Geneva Convention relating to the Status of Refugees and its 1967 protocol; urges Member States to lead by example by adhering to the UN Convention on the Rights of Migrant Workers, which is one of the core UN human rights conventions;

31. Believes that the EU must take a leading role in supporting policy and normative developments in relation to the rights of migrants in multilateral fora; highlights the key role that international organisations, regional bodies and NGOs, such as the International Committee of the Red Cross, the UN High Commissioner for Refugees (UNHCR) and the UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), as well the OHCHR and the UN Special Rapporteur on the human rights of migrants; calls on the Commission and the Member States to increase financial and political support to these organisations and entities

32. Calls for the EU to include diasporas, affected communities, refugee- and migrant-led organisations, particularly those led by women, and civil society representatives in the design, implementation and evaluation of projects carried out in third countries;

33. Instructs its President to forward this resolution to the Council and the Commission.
EXPLANATORY STATEMENT

This INI report includes an analyses and recommendations on human rights protection in the framework of the EU external asylum and migration policy, which aims at ensuring the EU’s cooperation with third countries on migration respects and promotes the human rights of migrants and refugees across the globe.

Global commitments on responsibility sharing

In the New York Declaration on Refugees and Migrants of September 2016, the EU Member States promised to contribute to ‘a more equitable sharing of the burden and responsibility for hosting and supporting the world’s refugees, while taking account of existing contributions and the differing capacities and resources among states’. This declaration was followed by two Global Compacts: the Compact on safe, orderly and regular migration (GCM), adopted on 19 December 2018 by the UN General Assembly, and the Global Compact on refugees (GCR), adopted two days earlier. Commitments on responsibility sharing are urgently needed, as more than 80 percent of the refugees are hosted in their neighbouring countries, often suffering from a lack of perspective or even protection.

The EU developments on asylum however, raise the question if the EU and its Member States really keep up with their commitments made at the global level. The tendency of externalisation of its asylum and migration policy, which it has in common with other wealthy countries and regions, seems to move towards the opposite direction, as a result of outsourcing protection and border control. The formal and informal agreements the EU concludes with third countries of transit are likely to result in less instead of more responsibility sharing. An important aim behind these agreements is to reduce and discourage irregular migration to the EU, including those who seek protection.

The external dimension of EU migration policy

Based on the Treaty of Amsterdam, EU norms have been established offering rights to migrants and refugees who have arrived at the EU territory. At the same time however, the EU created many instruments to prevent irregular arrival at its territory, such as common visa policy, carrier sanctions and the establishment of the FRONTEX, and to promote the return of third country nationals staying irregularly at the EU territory. Europeanising the cooperation with third countries allowed the Member States to make use of the Community’s external powers in fields such as trade and development and merge national and EU budgets to serve their interests in the field of readmission. Under the ‘more for more’ principle, negotiations with third countries on migration control include various positive incentives for transit countries to persuade them to strengthen their border controls, restrict their visa policy and readmit irregular migrants. The most effective leverage is created by pre-accession and visa liberalization conditionality. In 2016, the Commission published a Communication on establishing a new Partnership Framework with third countries under the European Agenda on Migration, in which it moved towards the ‘less for less’ approach. Sanctions for non-cooperation, with the use of all available tools and instruments, except for humanitarian aid. The Commission argued that such cooperation should not necessarily be based on formal readmission agreements. Since the adoption of this Communication, several informal arrangements have been concluded with third countries, including Gambia, Bangladesh, Turkey, Ethiopia, Afghanistan, Guinea and Ivory Coast.
The Rapporteur regrets that informal deals are concluded in the complete absence of the duly parliamentary scrutiny and democratic and judicial oversight that according to the Treaties the conclusion of formal readmission agreements would warrant. Formal agreements allowing for appropriate democratic oversight would ensure appropriate monitoring through the establishment of legally binding frameworks for cooperation, which can be challenged before courts, including by individuals affected by those agreements. In this resolution, the Rapporteur calls upon the Parliament to assess the legality of informal agreements which include commitments on issues that belong to the competencies of the European Parliament, such as readmission, and to undertake further action in case of incompatibility with the Treaties.

**Human rights concerns**

The cooperation on migration with third countries entails several human rights risks, which have increased with the shift of attention from countries of origin to countries of transit. In order to reduce the number of readmitted migrants to a minimum, those transit countries tend to restrict their incoming and outgoing migration, with strengthened border controls, restricting visa policies and concluding readmission agreements with their neighbouring countries. EU cooperation with its neighbours thus creates a chain effect in the region of return and of combating irregular migration at the same time. This threatens the principle of human dignity as enshrined in international law and the EU Charter of Fundamental rights, in particular if the migrant is unable to return to his home country.

This cooperation also affects refugees on their way to a place of safety, as the vast majority of them has no legal means to travel. They run the risk to be unable to flee their own country or to get stuck in a transit country with a failing protection system. This effect affects the right to leave a country, the right to asylum and the prohibition of non-refoulement, and the prohibition of inhuman or degrading treatment. As migrants and refugees may face obstacles to invoke their rights, the right to an effective remedy is as stake as well. There are ample indications that strengthened border controls create risks for stability and livelihoods, limit protection opportunities and the right to seek asylum, promote repression and abuse against migrants and push migrants onto precarious routes. The EU external cooperation on migration also impedes the mobility opportunities of migrants in their region. As freedom of movement and the right to work make migrants self-reliant and help further their integration, intra-ECOWAS migration should be promoted instead of hampered.

Despite these human rights implications, readmission agreements and other forms of migration cooperation, do not require a certain protection level to be in place. Human rights standards are not included in the criteria for entering into cooperation with a third country, there is no human rights impact assessment undertaken prior to the conclusion of an agreement and an independent and transparent monitoring system as well as a suspension clause are failing as well. The rapporteur therefore recommends to the Parliament to ensure the establishment of effective instruments safeguarding human rights compliance of the external dimension.
Responsibility

In its landmark judgment *Hirsi v Italy*, the Court convicted Italy for its push back operations in the international waters in cooperation with Libya. Automatic returns (push back operations) without any individual assessment and the possibility of legal redress constitute a violation of *Articles 3 and 13 of the European Convention on Human Rights (ECHR)* and *Article 4 of the Protocol no 4 to the Convention*. The Court made clear that Member States exercising effective control over migrants are also bound by the obligations of the ECHR if this control takes place outside their territory. In a judgment on the automatic return of sub-Saharan migrants by the Spanish government to Morocco, the ECtHR made clear that Member States cannot escape their responsibility while construing their jurisdiction in a certain way. However, since then, EU Member States complement their border control activities with border control by proxy, through the funding and training of border and coast guards of neighbouring countries. This tendency of delegating their action to third countries raises the questions of responsibility and accountability if it results in human rights violations. Not to assume responsibility would imply that Member States can easily escape their obligations under the ECHR by simply letting third parties ‘do the job’.

If EU Agencies are operating outside the EU territory, Union law is directly applicable, including the Charter of Fundamental Rights. If their actions to prevent the departure of migrants would result in a violation of the right to asylum, the prohibition of refoulement, torture or inhuman or degrading treatment, the right to human dignity or the right to an effective remedy, this Agency has a responsibility and thus, should be held accountable. The Rapporteur calls upon measures for a more effective human rights monitoring and compliance of actions by Frontex.

Leverage and responsibility

The EU has a lot of leverage to get things done. However, if it comes to migration, its use of this leverage, is one-dimensional, focussing on combatting irregular migration and readmission. We see this *conditionality* in the negotiations on association and visa facilitation agreements, and regarding the possibility to suspend exemptions from the visa requirement. Furthermore, commitments on resettlement from hosting countries are being made dependent on their cooperation on readmission and border control. The Rapporteur stresses that the EU should also use its leverage to make the *funding for migration reasons conditional on access to protection* and the improvement of the rights of refugees regarding the labour market and education. This could be a way of preventing human rights violations as a result of migration deals, but also help refugees in a protracted situation to build a sustainable future. Overall, the EU should use its leverage to contribute to a more equitable responsibility sharing, by investing in better living conditions and a more effective protection system for refugees in third countries hosting refugees. It should work towards a *Global Refugee Fund*, with the aim to make the funding of hosting refugees more predictable and sustainable. In order to effectively combat irregular migration and promote equal partnership with third countries, it should step up its resettlement pledges and create legal channels for labour, study and business.

The prioritisation of the fight against irregular migration under the New Partnership Framework may create tensions with the stated equality of the partnerships, as well as with the objective of a coherent and effective EU foreign policy, as it may subordinate other
**policy objectives**, such as the promotion of peace and stability, social upward mobility and other development goals such as combating poverty, illiteracy, and good governance to strictly migratory-related objectives. The prioritisation of migration also leads to concerns on the implementation of the **financing instruments** under the Partnership Framework on Migration. A prominent one is the Emergency Trust Fund for Africa (EUTF), as established during the Valetta Summit. Despite the labelling as an emergency instrument, most of the resources of the EUTF consist of Official Development Assistance (ODA), which is intended to fund long-term development programmes. Through this fund, a significant part of the European budget for development aid is channelled towards practices of migration management, including the support of the Libyan Coast Guard intercepting migrants to take them back to horrible places of detention. The prioritisation of migration also leads to a shift of ODA-money from countries with the most needs to countries where most migrants come from. The rapporteur stresses that the **funding** should guarantee a **balance** between investing in protection systems and combatting root causes on the one hand and migration management on the other hand. Funding external actions in the field of migration and asylum should be accompanied by an **effective and transparent way to monitor and evaluate the implementation of the funds**, with due regard to the human rights impact. This also requires that financing agreement are concluded, in which the roles and responsibilities of the third country and the Commission in the implementation of the funds are clearly defined.
OPINION OF THE COMMITTEE ON DEVELOPMENT

for the Subcommittee on Human Rights

on human rights protection and the EU external migration policy
(2020/2116(INI))

Rapporteur for opinion: Miguel Urbán Crespo

SUGGESTIONS

The Committee on Development calls on the Subcommittee on Human Rights, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

1. Reaffirms that the right to migrate is a human right; calls on the Commission to enhance development and humanitarian policies and related legal instruments in order to address the challenge of protecting fundamental human rights for all, including migrants, with the aim of increasing the effectiveness of development cooperation; recalls that the EU Treaties provide that the Union is founded on respect for human rights and dignity, and it therefore follows that EU migration policy must be based on respect for human rights in order to strengthen the position of the EU in the international arena and the credibility of its foreign policy;

2. Recalls that EU development cooperation must have as its main objective the eradication of poverty, the reduction of inequalities and the fight against exclusion, while leaving no one behind, empowering individuals, promoting the rule of law, democratic governance and human rights, and enhancing sustainable and inclusive development, as laid down in Article 21 of the Treaty on European Union and Article 208 on the Treaty of the Functioning of the European Union; insists that EU development cooperation must be based on partner countries’ development agendas, following a needs- and rights-based long-term approach to migration, with a special focus on the most vulnerable;

3. Calls for the EU to tailor its official development assistance (ODA) towards tackling the root causes of poverty and minimising incentives to irregular migration and the causes of forced displacement by improving democratic processes and good governance, creating opportunities for youth engagement and entrepreneurship, advancing gender equality, tackling climate change and providing access to services; insists on the
importance of designing policies tailored to local circumstances and in partnership with local actors;

4. Calls for the EU to strengthen its Regional Development Protection Programmes (RDPPs) within a human rights framework and to foster third countries’ capacity building, conflict resolution, and protection and promotion of and respect for human rights; calls for the EU to encourage and assist partnership countries in achieving greater cooperation with international organisations, civil society and regional bodies and organisations in order to facilitate regional mobility and enhance the mobilisation of resources in order to ensure that migrants, refugees and returnees are treated with dignity and in compliance with international humanitarian law;

5. Recalls that the European Consensus on Development provides for a coordinated, holistic and structured approach to migration, as a result of its cross-cutting nature, and considers migration to be one of the key areas to which Policy Coherence for Development (PCD) applies; calls, in this regard, for PCD-compliant and regularly assessed external migration policies which contribute to the protection of human rights, gender equality and empowerment, poverty eradication and human development;

6. Reiterates that respect for migrants’ human rights must remain central in the EU’s new migration and asylum policy, and expresses its concern about the externalisation of EU border management and migration control; insists that the EU must conduct humane and safe border control and migration management;

7. Believes that the new EU Pact on Migration and Asylum could be improved; considers that the human dignity of refugees and migrants should be at the heart of a new approach based on the principles of solidarity and shared responsibility, including common reception policies and a mandatory relocation system, ensuring full respect for human rights and international, refugee and maritime law;

8. Reiterates that shipwrecks and the deaths of migrants in the Mediterranean Sea are a momentous tragedy to which we have a shared responsibility to put an end; recalls that rescue at sea is a legal obligation under international law, in particular in accordance with Article 98 of the UN Convention on the Law of the Sea, which requires that assistance be given to any person in distress at sea; stresses the need for a permanent, robust and effective Union response in search and rescue operations at sea, first and foremost through a dedicated EU mission, in order to prevent further loss of life among migrants attempting to cross the Mediterranean Sea;

9. Recalls that, as most migrants move within their region and continent of origin, intra-regional and intra-continental mobility should be facilitated; calls for the EU-Africa Partnership and the future ACP-EU agreement to support the intra-regional and intra-continental mobility of persons in accordance with the African Charter of Human Rights and the African Union Protocol to the Treaty Establishing the African Economic Community Relating to Free Movement of Persons, Right of Residence and Right of Establishment;

10. Insists on the need for humanitarian corridors from neighbouring and developing countries into the EU; calls for the EU to tackle human trafficking networks;
11. Calls for the EU to develop new safe and legal pathways for migrants and to improve on existing pathways; considers that the EU should strive to develop a more sustainable circular labour migration policy in partnership with third countries and to ensure safe two-way migration mobility, such as for labour and academic purposes;

12. Reiterates that the allocation of EU development assistance in bilateral or multilateral partnerships with developing countries cannot be conditional on cooperation with the EU on migration policies, as this would undermine the EU’s legal obligation to PCD and under the European Consensus on Development, as well as the primary purpose of ODA of eradicating poverty, and would be at odds with the aid effectiveness principle of country ownership; insists that development aid must not be tied to the external security policies of the EU and that a more coordinated, structured and holistic approach to migration must still be defined and implemented with full respect for human rights, including the right of every individual to leave their country of origin;

13. Expresses its deep concern about the misuse of development funds for actions that result in the violation of human rights in border management; deplores the reported human rights violations linked to the EU Emergency Trust Fund for Africa (EUTF) in Libya, Ethiopia, Eritrea and Niger; calls for the creation of strong mechanisms to monitor the human rights impacts of the EUTF, as well as an accountability system to prevent and deal with breaches of international law; deplores the fact that the Commission’s report on the extension of the EUTF does not envisage any improvement in this field; reiterates the need for a thorough investigation into the alleged human rights abuses, including those at EU borders; welcomes, therefore, the introduction of a new independent monitoring mechanism into the Commission’s new Pact on Migration and Asylum;

14. Deplores the lack of transparency of the EUTF and the fact that Parliament is not involved in its scrutiny; insists that partner countries and civil society organisations should be more closely involved; urges the Commission to present its final comprehensive review on the implementation of the EUTF to ensure that it falls in line with the EU’s development, human rights and humanitarian objectives; regrets that the extension of the EUTF was requested by the Commission in the absence of such a review and that there is therefore no evidence to show whether these objectives have been properly assessed and achieved; reiterates its call for the full involvement of the European Parliament in the supervision and governance of EU Trust Funds; considers it essential that the activities of the operational committees are also monitored, and asks the Commission to ensure the presence of a representative of the European Parliament at these committees and to transmit detailed information on the decisions taken;

15. Reiterates that the Neighbourhood, Development and International Cooperation Instrument (NDICI) budget dedicated to migration should be used to address the root causes of migration and not to control migratory flows or fund external border management; highlights that the NDICI should contain measures that will ensure accountability and transparency in spending and the implementation of migration-related projects so that their focus on tackling the root causes of migration is monitored and preserved;

16. Considers that any EU agreement with countries of origin and transit should ensure the
full protection of human lives, dignity and human rights; expresses deep concern that these guarantees are not always fully respected and that migrants and refugees often face inhumane conditions of transfer and detention; recalls in particular the unacceptable situation in detention centres in Libya, where thousands of people are systematically subjected to arbitrary detention under inhumane conditions, torture and other abuses, including rape, arbitrary killings and exploitation;

17. Expresses concern at the readmission clauses included in some legally binding partnership and cooperation agreements with third countries, in particular in the absence of provisions in line with international human rights law; calls for the EU to strive for formal agreements with partner countries on migration mobility, returns and readmission in line with the Charter of Fundamental Rights of the European Union and the Convention Relating to the Status of Refugees (Geneva Convention); insists on the importance of the European Parliament’s active participation in the development of these and existing agreements; stresses that future partnership agreements should be subject to parliamentary scrutiny and based on the principles of solidarity, shared responsibility, respect for human rights, the rule of law and international humanitarian law;

18. Maintains that the return of migrants ought primarily to be carried out on a voluntary basis and insists that all returns must be carried out under safe conditions, with full respect for the fundamental and procedural rights of the migrants concerned and only if the country to which they are to be returned is considered safe; considers positive the practice of assisted voluntary returns through which migrants who expressly want to return to their country of origin are given assistance at all stages of the process; calls on Member States to fully respect the principle of non-refoulement and to introduce adequate procedural safeguards in their asylum and border procedures;

19. Underlines that the needs and rights of people in vulnerable situations should be duly taken into account, including those of unaccompanied minors, people with disabilities, women and children, and asks for them to be provided with adequate forms of immediate protection and shelter;

20. Stresses the primacy of the principle of the best interests of the child in all aspects concerning children and considers it essential to apply specific procedures to ensure the protection of all children, in line with the UN Convention on the Rights of the Child;

21. Highlights the particular difficulties faced by women on their migration path and therefore calls for the establishment and strengthening of protection systems for migrant women in order to prevent and combat the violence, abuse, neglect and exploitation of which they are victims.
INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

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| | -: 9  
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| Members present for the final vote | Anna-Michelle Asimakopoulou, Hildegard Bentele, Dominique Bilde, Udo Bullmann, Catherine Chabaud, Ryszard Czarnecki, Gianna Gancia, Charles Goerens, Mónica Silvana González, Pierrette Herzberger-Fofana, György Hölvényi, Rasa Juknevičienė, Pierfrancesco Majorino, Erik Marquardt, Norbert Neuser, Janina Ochojska, Jan-Christoph Oetjen, Michèle Rivasi, Christian Sagartz, Marc Tarabella, Tomas Tobé, Miguel Urbán Crespo, Bernhard Zimniok |

| Substitutes present for the final vote | Barry Andrews |
### FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

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Key to symbols:
+ : in favour
- : against
0 : abstention
15.1.2021

OPINION OF THE COMMITTEE ON CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS

for the Committee on Foreign Affairs

on human rights protection and the EU external migration policy
(2020/2116(INI))

Rapporteur for opinion: Sira Rego

PA_NonLeg

SUGGESTIONS

The Committee on Civil Liberties, Justice and Home Affairs calls on the Committee on Foreign Affairs, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

A. whereas the EU’s approach to the external dimension of migration has led it to cooperate with third countries in the field of border control and migration management; whereas the ‘externalisation’ of EU border management and migration control is of concern in the light of possible risks of violations of human rights standards and whereas the EU should conduct humane and safe border control and migration management; whereas the new EU Pact on Migration and Asylum puts a strong focus on cooperation with third countries; whereas all forms of cooperation need to be anchored in fundamental and human rights;

B. whereas Article 208 of the Treaty on the Functioning of the European Union (TFEU) stipulates that development assistance shall have as its primary objective the reduction and, in the long term, the eradication of poverty; whereas the increasing use of development cooperation for migration control in third countries is therefore of concern; whereas the allocation of EU development assistance in bilateral or multilateral partnerships with developing countries should not be conditional on cooperation on migration policies;

C. whereas EU law requires the observance of fundamental rights, in all the EU’s internal and external action; whereas human rights should be a central component of the EU’s foreign and external policy; whereas the EU’s external migration policy should strictly adhere to the European Convention on Human Rights and the EU Charter of Fundamental Rights as well as EU and international law;

D. whereas the EU’s external migration policy should aim to protect the fundamental rights of forcibly displaced persons and in need of international protection in countries of
origin and transit; whereas concerns have been expressed regarding the impact of current policies on the rights of people in third countries, notably with regard to human dignity, the right to leave a territory, to asylum, to integrity, to liberty and to security, the prohibition of ill-treatment, refoulement, pushbacks and collective expulsion, and procedural guarantees;

E. whereas at least 20,000 people have lost their lives in the Mediterranean since 2014 and many more have perished along migratory routes in the Sahara desert and elsewhere; whereas there have been consistent reports of pushbacks and human rights violations at the EU’s external borders, notably those located between Greece and Turkey and between Croatia and Bosnia and Herzegovina;

F. whereas the failure to assist people in distress at sea and pushbacks to unsafe ports in third countries violate the international law of the sea as enshrined in the International Conventions on the Safety of Life at Sea (SOLAS) of 1974 and on Maritime Search and Rescue (SAR) of 1979, the right to life and the right to asylum; whereas Member States should abide by this obligation in the entire Mediterranean Basin and not criminalise individuals or organisations that provide support or assistance to people in distress, as recommended by the Commission in its 2020 guidance\(^1\); whereas the establishment, operation and maintenance of adequate and effective search and rescue operations is an obligation under international law and should be supported by the EU;

G. whereas since 2016, the EU has ramped up the number of informal agreements and arrangements with third countries on return and readmission, including joint migration declarations, memoranda of understanding, joint ways forward, standard operating procedures and good practices; whereas as with formal readmission agreements, such informal arrangements affirm states’ commitments to readmitting their nationals (or others) and establish procedures for how returns should be carried out in practice; whereas the EU has established at least 11 informal arrangements since 2016, while concluding just one new readmission agreement; whereas existing informal arrangements on migration with third countries lack safeguards for the rights of third-country nationals and provisions for termination or suspension in the light of human rights violations;

H. whereas the European Border and Coast Guard Agency (Frontex) has played a greater role in practical and operational cooperation with third countries, including cooperation on return and readmission, the provision of training, operational and technical assistance to authorities of third countries for the purposes of border management and border control, carrying out operations or joint operations at the EU’s external borders or in the territories of third countries, and deploying liaison officers and operational staff in third countries;

I. whereas the former UN Special Rapporteur on the human rights of migrants has criticised the lack of monitoring and accountability of the EU’s migration agreements; whereas he also concluded that there are few signs that mobility partnerships have yielded additional human rights or development benefits;

\(^1\) Commission guidance of 23 September 2020 on the implementation of EU rules on definition and prevention of the facilitation of unauthorised entry, transit and residence (C(2020)6470).
J. whereas some third countries have criminalised smuggling and restricted regional migration mobility in the framework of their cooperation with the EU; whereas the criminalisation of migration in Niger has affected local livelihoods and free movement in the Economic Community of West African States (ECOWAS), which since 1975 has applied a series of protocols that allow the free movement of persons within the region;

K. whereas a number of investigative journalists and human rights monitoring groups have documented human rights violations that are reportedly linked – directly or indirectly – to the implementation of the EU’s migration policy in third countries; whereas some civil society organisations (CSOs) have launched legal proceedings against the EU and its Member States for such violations; whereas a complaint has been filed with the European Court of Auditors regarding EU funding in Libya, requesting the suspension of the programme supporting the Libyan coast guards in light of its violation of EU financing law regulations and international regulations on human rights\(^2\); whereas a complaint has also been submitted to the International Criminal Court against some EU and Member State officials for causing the deaths of thousands of human beings per year, the refoulement (forcible return) of tens of thousands of migrants attempting to flee Libya, and the subsequent commission of murder, deportation, imprisonment, enslavement, torture, rape, persecution and other inhumane acts against them\(^3\);

L. whereas the Commission is yet to evaluate the impact of the implementation of its successive migration policy frameworks, notably the Global Approach to Migration and Mobility and the new Partnership Framework on the Human Rights of Third-Country Nationals, as well as the human rights impact of the EU’s cooperation on migration with third countries; whereas such an evaluation would benefit from consultation with and the meaningful participation of the communities affected and needs to be carried out in a comprehensive, inclusive and public format with a view to ensuring that the EU’s external migration policy is fully compliant with human rights;

1. Calls on the Commission to carry out a comprehensive evaluation of the human rights implications of the EU’s external migration policy, paying particular attention to the EU-Turkey statement, cooperation with Libya, the Joint Way Forward with Afghanistan, projects carried out under the Khartoum Process, and Frontex border management cooperation, agreements and action at sea;

2. Calls on the Commission to factor into its evaluation information gathered through permanent dialogue with CSOs and other actors working on the ground, and to identify areas of and tools for improvement based on the conclusions of this evaluation;

3. Calls on the Commission to forge greater cooperation with third countries on a comprehensive approach in line with human rights, in particular the right to asylum, the prohibition of ill-treatment, the principle of non-refoulement, the right to liberty, and the prohibition of collective expulsion;

4. Calls on the Commission and EU agencies to withhold or review their cooperation with

\(^2\) Global Legal Action Network (GLAN), ‘EU financial complicity in Libyan migrant abuses’.

\(^3\) Students of the Capstone on Counter-Terrorism and International Crimes, communication to the Office of the Prosecutor of the International Criminal Court entitled ‘EU Migration Policies in the Central Mediterranean and Libya (2014-2019)’.
third countries, including suspending specific funding and projects, which endanger the human rights of those affected, including where third countries do not fully respect the fundamental rights stemming both from the UN Convention of 1951 Relating to the Status of Refugees and the European Convention on Human Rights, have not ratified these conventions, or fail to comply with the SOLAS and SAR Conventions; stresses that the EU’s external migration policy should not support interceptions at sea that would return people to an unsafe port;

5. Calls on the Commission and Member States, in view of the serious human rights violations against refugees, asylum seekers and migrants in Libya, including those intercepted at sea, to urgently review all cooperation activities with the Libyan coast guard and to suspend them until clear guarantees of human rights compliance are in place;

6. Points to the EU-Turkey statement, under which human rights violations have taken place that are incompatible with the EU Charter of Fundamental Rights; calls on the Commission to urgently review the EU-Turkey statement to ensure its strict compliance with human rights standards and EU law;

7. Notes that EU cooperation with third countries has been focused on the need to increase numbers of returns, without a thorough assessment of the implications in terms of human rights violations; notes that strengthened border controls and restricted visa policies may make it more difficult for migrants to enter a country, despite the need for protection; stresses that this situation may not only undermine the right to leave a country, but also the right to asylum as enshrined in international human rights law;

8. Is deeply concerned about the consistent reports of pushbacks involving European actors at the EU’s external borders; considers that violations of human rights, in particular the right to asylum, by any actor involved in border management, undermine efforts to achieve a humane and rights-based migratory policy at a global level;

9. Stresses the seriousness of the allegations of illegal actions performed by Frontex vessels and condemns any potential complicit behaviour in maritime pushback operations; calls on the Commission, as guardian of the Treaties, to issue a firm demand for an independent investigation into these allegations and the way in which Frontex’s operations are monitored in order to ensure compliance with international law and the principles and values regarding the protection of those at risk at sea; raises concerns, moreover, regarding the transmission of Frontex aerial surveillance to third countries to intercept people fleeing torture and inhumane and degrading treatment; recalls that pursuant to Article 46 of Regulation (EU) 2019/1896, the executive director of Frontex should suspend or terminate any activity, in whole or in part, if they consider that there are violations of fundamental rights or international protection obligations that are of a serious nature or are likely to persist;

10. Welcomes the Commission’s acknowledgment of the need to set up an independent border monitoring mechanism and the inclusion of this proposal in the EU Pact on Migration and Asylum; calls, in this regard, for the establishment of an EU-wide mechanism allowing for the independent investigation of alleged violations of EU law at the borders with a view to putting an end to violations of fundamental and human
rights; insists on the need to ensure the independence, transparency and effectiveness of such an instrument;

11. Calls for the mandate of the EU Fundamental Rights Agency to be extended to allow it to exercise an advisory role in the external dimension of EU asylum and migration policies and its involvement in monitoring exercises;

12. Recalls that cooperation with third countries in the context of the external dimension of the EU’s migration policy should promote development and address the root causes of forced migration by eradicating poverty and creating economic opportunities, respond to the short and long-term needs of refugees, migrants and communities in countries of origin, transit and destination, contribute to the fight against xenophobia, racism and discrimination, help to secure better living conditions and guaranteed access to rights for refugees, migrants and stateless persons around the world, and promote full respect for international and EU law; calls for the EU, in particular, not to hinder freedom of movement in the ECOWAS region, which has a long tradition of seasonal and circular migration;

13. Stresses that cooperation with third countries needs to be based on lasting and mutually beneficial partnerships; calls on the Commission to ensure that policies on development cooperation do not contravene the principles and objectives enshrined in Article 208 of the TFEU, namely the reduction and, in the long term, the eradication of poverty; stresses that mobility partnerships and common agendas for migration and mobility can be effective tools to enhance cooperation with third countries on migration;

14. Calls for the EU to include diaspora, affected communities, refugee- and migrant-led organisations, particularly those led by women, and civil society representatives in the design, implementation and evaluation of projects carried out in third countries;

15. Insists on the need to increase the oversight and scrutiny of the European Parliament throughout the design, implementation and evaluation of cooperation agreements with third countries on migration; deprecates the fact that the Commission has bypassed the scrutiny of the European Parliament in its cooperation with third countries on migration;

16. Deplores the lack of transparency of the EU Trust Fund for Africa (EUTF) and the fact that Parliament is not involved in its scrutiny; calls on the Commission to comprehensively review the implementation of the EUTF, including by reviewing the composition of its board, ensuring that Parliament is actively involved, including scrutiny over the choice of projects, and by involving and building a dialogue with local CSOs working on the ground and human rights CSOs; calls for transparency in the implementation of the EUTF and for Parliament to be kept informed at all stages;

17. Condemns the increasing use by the EU and its Member States of informal arrangements with third countries reached in the absence of due parliamentary scrutiny and democratic and judicial oversight; calls for full transparency over such arrangements and their implementation; calls on the Commission to respect Parliament’s prerogatives in decisions regarding the external dimension of EU migration policies in line with Article 218 of the TFEU;

18. Calls for appropriate operational, reporting, monitoring and accountability mechanisms,
including effective judicial remedies, to be integrated throughout the EU’s cooperation with third countries, in particular informal agreements and financial cooperation; calls on the Commission, in particular, to establish a relevant monitoring mechanism that is independent, transparent, effective, participatory for civil society and field workers, and periodic, with publicly available outcomes;

19. Calls for the EU and the Member States to develop and increase safe and legal pathways to the EU to protect migrants and refugees from embarking on dangerous routes, including by significantly increasing the Member States’ contributions to the UNHCR’s Global Resettlement Needs objective and by introducing new avenues for legal migration for partner countries, thereby converting them into valuable tools to complement bilateral and multilateral cooperation in the area of legal migration and mobility; reiterates, in particular, that visa liberalisation is key to creating a genuine mutually beneficial partnership with third countries;

20. Highlights the key role of international organisations, such as the UNHCR, UNICEF and the International Organization for Migration (IOM), in improving the protection of human rights near the homes from which people are fleeing; calls for the EU to increase its support for these organisations and to ensure that humanitarian organisations can in all their activities attend unhindered to all migrants in need, including at detention facilities and border crossing points, in order to provide them with humanitarian and medical assistance, including family tracing services;

21. Notes that most of the 18 official readmission agreements (EURAs) concluded to date include the readmission of third-country nationals to a transit country; underscores the fact that returns to transit countries entail the risk of potential human rights violations of returnees; calls for provisions to operationalise human rights, including the principle of non-refoulement and measures aimed at preventing indirect or chain refoulement, to be systematically included in readmission and informal agreements; calls on the Commission, moreover, to ensure that EURAs contain a suspension clause allowing for their unilateral interruption should they give rise to persistent human rights violations;

22. Stresses that Regulation (EU) 2019/1896 requires that Frontex provide Parliament with timely, consistent, transparent, complete and accurate reporting of its activities as regards cooperation with third countries and, in particular, technical and operational assistance in the field of border management and return in third countries and the deployment of liaison officers, as well as detailed information on compliance with fundamental rights;

23. Calls for Frontex ad hoc status agreements to include specific measures for the operationalisation of human rights as part of border management and a clear accountability mechanism for potential human rights violations; calls on Frontex to regularly inform Parliament’s DROI, AFET and LIBE Committees of any activities involving cooperation with third countries and, in particular, on the operationalisation of human rights as part of such activities.
INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

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<th>12.1.2021</th>
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| Result of final vote | +: 35  
|                  | -: 27  
|                  | 0: 2 |
| Members present for the final vote | Magdalena Adamowicz, Malik Azmani, Katarina Barley, Pietro Bartolo, Nicolas Bay, Vladimír Bilčík, Vasile Blaga, Ioan-Rareș Bogdan, Patrick Breyer, Saskia Bricmont, Joachim Stanisław Brudziński, Jorge Buxadé Villalba, Damien Carême, Caterina Chinnici, Clare Daly, Marcel de Graaff, Lena Düpont, Cornelia Ernst, Laura Ferrara, Nicolaus Fest, Jean-Paul Garraud, Maria Grapini, Sylvie Guillaume, Andrzej Halicki, Balázs Hidvéghi, Evin Incir, Sophia in ’t Veld, Lívia Járóka, Marina Kaljurand, Assita Kanko, Fabienne Keller, Peter Kofod, Łukasz Kohut, Alice Kuhnke, Jeroen Lenaers, Juan Fernando López Aguilar, Lukas Mandl, Nuno Melo, Roberta Metsola, Nadine Morano, Javier Moreno Sánchez, Maite Pagazaurtundúa, Nicola Procaccini, Emil Radev, Paulo Rangel, Terry Reintke, Ralf Seekatz, Michal Šimečka, Birgit Sippel, Martin Sonneborn, Tineke Strik, Ramona Strugariu, Annalisa Tardino, Tomas Tobé, Dragoș Tudorache, Bettina Vollath, Jadwiga Wiśniewska, Elena Yoncheva, Javier Zarzalejos |
| Substitutes present for the final vote | Sira Rego, Miguel Urbán Crespo, Hilde Vautmans, Petar Vitanov |
### FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

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**Key to symbols:**
- **+**: in favour
- **-**: against
- **0**: abstention
## INFORMATION ON ADOPTION IN COMMITTEE RESPONSIBLE

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| **Substitutes present for the final vote** | Markéta Gregorová, Marisa Matias, Nicolae Ștefănuță |
| **Substitutes under Rule 209(7) present for the final vote** | Charles Goerens, Stelios Kympouropoulos, Leopoldo López Gil |
### FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

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</tr>
</tbody>
</table>

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