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DRAFT REPORT

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

Committee on Foreign Affairs

Rapporteur: Tineke Strik

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

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

The European Parliament,

- having regard to the Universal Declaration of Human Rights of 1948, and in particular Article 13 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 and 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 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 of other Special Rapporteurs, the Universal Periodic Review and 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 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 Commission’s Joint Communication to the European Parliament and the Council of 25 March 2020 entitled ‘EU Action Plan on Human Rights and Democracy for 2020-2024’ (JOIN(2020)0005),
- 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 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 countries¹, of 17 December 2014 on the situation in the Mediterranean and the need for a holistic EU approach to migration², of 29 April 2015 on the latest tragedies in the Mediterranean and EU migration and asylum policies³, and of 12 April 2016 on the situation in the Mediterranean and the need of a holistic EU approach to migration⁴,
 - having regard to its resolution of 5 July 2016 on the fight against trafficking in human beings in the EU's external relations⁵,
 - having regard to various reports by civil society organisations on the human rights situation of migrants,
 - 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 (A9-0000/2020),
- A. whereas migration is a global phenomenon amplified by globalisation, rising conflicts, inequalities, and climate disruption; whereas gradual, normative development within the modern international human rights framework of the rights of migrants, independently of their legal status, represents a source of progress and collective pride for humanity; whereas migrants remain, however, among the most vulnerable groups worldwide and continue to face violations of their rights; whereas migration continues to be for many individuals a human journey marred by suffering, discrimination and violence; 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, has a particular duty to respect, protect and promote the rights of migrants, notably in its external dealings;
- B. 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, through 'partnerships' aiming at ensuring cooperation on migration management, in effectively preventing irregular migration and readmitting irregular migrants, including with positive and negative incentives stemming from different policy elements within EU competence, including neighbourhood, development aid, trade, mobility, energy, security and digital policies, all leveraged towards the same objective;

¹ OJ C 215, 19.6.2018, p. 111.

² OJ C 294, 12.8.2016, p. 18.

³ OJ C 346, 21.9.2016, p. 47.

⁴ OJ C 58, 15.2.2018, p. 9.

⁵ OJ C 101, 16.3.2018, p. 47.

- C. whereas in its 2016 communication the Commission outlined three main objectives for cooperation with third countries, namely: 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;
- D. whereas since 2016 the EU has multiplied the number of informal agreements and arrangements on return and readmission with third countries, including Joint Migration Declarations, Memoranda of Understanding, Joint Ways Forward, Standard Operating Procedures and Good Practices; 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;
- E. whereas in its communication on the new Pact on Migration and Asylum of 23 September 2020, the Commission reiterated 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;
- F. 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 commits the EU to 'promoting 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 to 'support[ing] a human rights-based approach to migration governance and strengthen[ing] the capacity of states, civil society and UN partners to implement this approach';
- G. whereas the former UN Special Rapporteur on the human rights of migrants has criticised the EU's approach to migration for its lack of transparency and clarity, and for 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 would be overshadowed by the secondary effects of more security-focused policies;
- H. whereas UN human rights experts 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, both during and after the pandemic;
- I. The migration policy framework and its external dimension**
1. Highlights that, alongside the Treaty-based obligation to pursue the values of respect for human dignity, the rule of law and respect for human rights and international law in all 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 such as private contractors or international organisations;
2. Stresses that these obligations require not only the abstract recognition of the applicability of the relevant standards, but also an appropriate operationalisation through detailed and specific instruments that allow for effective protection in practice as well as through a human rights-based approach to the entire migration policy cycle, from formulation to adoption, implementation and evaluation;
 3. Recalls that the EU and, when applying EU law, the Member States, in their external and extraterritorial actions in the areas of migration, borders and asylum, should pay specific attention to the rights enshrined in the Charter of Fundamental Rights, including the right to liberty, the right to asylum, human dignity and security, the prohibition of ill-treatment, slavery and forced labour, and the obligation to take the interests of the child as a primary consideration and to ensure non-discrimination and procedural guarantees such as the right to an effective remedy and data protection;
 4. Observes that the Commission has yet to evaluate the impact of the implementation of its successive migration policy frameworks, notably the GAMM and the new Partnership Framework, on the human rights of TCNs as well as the human rights impact of the EU's cooperation on migration with third countries; insists on the need to carry out such an evaluation in a comprehensive, inclusive and public format with a view to ensuring the full human rights compliance of the EU's external migration policy;
 5. Notes with concern the absence of operational, reporting, monitoring and accountability mechanisms at the level of individual cases to 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 EU cooperation with third countries, especially in the case of informal agreements and financial cooperation;
 6. 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 and the rights enshrined in the UN Refugee Convention, and to ensure that such cooperation does not lead to violations of those rights and offers operational means to nullify these agreements, seek remedy and ensure accountability should such violations occur;
 7. Calls on the Commission to ensure *ex ante* risk assessments, performed by independent agencies, on the impact of any formal, informal or financial EU cooperation with third countries on the rights of migrants and refugees; 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;
 8. Calls on the Commission to establish an independent, transparent and effective monitoring mechanism, which entails periodic reports on the implementation of formal, informal and financial agreements that can potentially impact the rights of migrants and refugees 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 transparent, participatory for civil society and field workers, and publicly available; insists on the need to ensure means for civil society and other interested stakeholders to be able to contribute to the work of the mechanism;

9. Calls on the EU to consider means to ensure access to justice for persons affected by measures implementing cooperation between it and third countries on migration, including through accessible mechanisms for seeking information, submitting complaints and securing effective remedy;
10. Notes that the implementation and funding of the EU's external migration policy is assigned to different Commission Directorates-General and mainstreamed across the EU's migration, asylum, development and foreign policies without a designated lead institutional actor; 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 control over the EU's external migration policy and exercise budgetary authority over development funds; urges the Commission to designate a single lead institutional interlocutor at Commissioner level on the external dimension of migration;
11. 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 in the absence of due democratic scrutiny and parliamentary oversight and are not subject to judicial scrutiny; calls on the Commission to prioritise the conclusion of formal readmission agreements, thus ensuring full respect for Article 218(6) TEU, and to ensure that formal EU Readmission Agreements (EURAs) exclude the application of informal agreements; believes that Parliament must assess the legality of informal agreements which include commitments on issues that fall within its competencies, such as readmission, and must be ready to undertake further action if these informal agreements appear to be incompatible with the Treaties;

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

12. Highlights the increased role of the European Border and Coast Guard Agency in practical and operational cooperation with third countries, including on return and readmission, 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;
13. Recalls that ad hoc Status Agreements, to be approved by the European Parliament, are required for the deployment of the European Border and Coast Guard Agency'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 also fail to clearly regulate accountability for potential human rights violations, and calls for any future status agreements to include such measures;

14. Stresses that Regulation 2019/1896 requires the European Border and Coast Guard Agency 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 the Agency to regularly inform Parliament's Subcommittee on Human Rights, Committee on Foreign Affairs and Committee on Civil Liberties, Justice and Home Affairs of any activities involving cooperation with third countries' authorities, and in particular the operationalisation of human rights as part of such activities;
15. Calls for the extension of the mandate of the Fundamental Rights Agency to allow it to exercise an advisory role in the external dimension of EU asylum and migration policies and its involvement in monitoring exercises;

III. EU cooperation with and financial aid to third countries in the field of migration

16. Notes with concern the increasing recourse since 2016 to enhanced conditionality between development cooperation and migration management, including return and readmission; stresses, however, that according to Article 208 TFEU the primary objective of Union development cooperation policy shall be the reduction and, in the long term, the eradication of poverty; calls, therefore, on the Commission to ensure that policies on development cooperation do not contravene the principles enshrined in Article 208 TFEU; stresses that the use of development cooperation as an incentive for migration management undermines meaningful action on the needs of people in developing countries, the rights of refugees and migrants, and their potential impact on regional migration patterns and contribution to local economies, and thus also undermines a wide range of rights stemming from the Sustainable Development Goals;
17. Notes that a complete, public overview of EU funding to third countries to facilitate cooperation on migration issues remains unavailable; calls on the Commission to provide improved transparency, including by establishing a clear overview of the funds used to finance cooperation with third countries in the field of migration management across all its financial instruments and their implementation, 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 the European Border and Coast Guard Agency, in order to ensure that Parliament can efficiently perform its institutional role of scrutiny of the implementation of the EU budget;
18. Stresses the importance of allocating a substantial share of future EU funding in the field of migration to civil society groups in third countries for providing assistance and for the protection and monitoring of the rights of migrants, and of ensuring that a significant part of EU funding is earmarked for the improvement of human rights, international protection, and the future perspective of refugees;
19. Notes that the possibilities of mainstreaming migration policy in EU external policy are significantly broadened by the inclusion of migration in the thematic, geographical and rapid response component of the proposed Neighbourhood, Development, International Cooperation Instrument (NDICI); notes with concern, however, that through the 'rapid response' component, cooperation with third countries on migration management can be

funded without the need for the Commission to publish any programming documents or consult civil society actors, and without the involvement of Parliament, including in the framework of the ‘Migration Preparedness and Crisis Blueprint’, which lacks mechanisms to assess the possible adverse impact of such interventions; 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;

20. Calls on the Commission to regularly report to Parliament on the funding of migration-related cooperation programmes in third countries and their human rights impact, including within the framework of the working group on external financial instruments of the Committee on Foreign Affairs;
21. Believes that Parliament must make full use of its powers of implementation, scrutiny and budgetary control and ensure that EU funding decisions and related allocations comply with the Union’s principles of legality and sound financial management;

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

22. Recalls the commitment of the EU and its Member States under the Global Compact on Refugees to share responsibility for the protection of refugees and ease the pressure on host countries; stresses in this regard that the EU and its Member States should contribute to a more structural and substantial funding of the regions hosting most refugees, and should not use financial means to shift responsibility for the protection of refugees to third countries; reiterates the importance of fully implementing the 23 objectives of the Global Compact for Safe, Orderly and Regular Migration; believes that Parliament must ensure the proper scrutiny of the implementation of both Compacts by the EU;
23. Calls for the EU and its Member States to pursue a migration policy that fully reflects the human rights of migrants as enshrined in both international and regional law; 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 human rights and migration nexus be adequately covered within the framework of bilateral EU human rights dialogues with the relevant countries; calls on the EU Delegations in those countries to monitor closely the rights of migrants, particularly in countries of transit; insists on the proactive engagement of the EU in countries where human rights defenders and civil society 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;
24. Calls for the EU to carry out a global campaign to support universal ratification of the Geneva Convention relating to the Status of Refugees; urges Member States to lead by example by adhering to the UN Convention on the Rights of Migrant Workers, as one of the core UN human rights conventions;
25. 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; calls on the Commission and the Member States to provide financial and political support for the relevant international and regional bodies, including NGOs, the International Committee of the Red Cross, the UN High Commissioner for Refugees (UNHCR) and

UNRWA, as well the OHCHR and the UN Special Rapporteur on the human rights of migrants;

26. 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 combatting 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 agreements are concluded, in which the roles and responsibilities of the third country and the Commission in the implementation of the funds are clearly defined.