

THE EUROPEAN UNION EXTERNAL ACTION ON MIGRATION AND ASYLUM: THE 2016 “MIGRATION PARTNERSHIP FRAMEWORK” AND ITS OUTCOMES

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ABSTRACT:

THIS PAPER FOCUSES ON THE EUROPEAN UNION (EU) EXTERNALISATION OF MIGRATION AND ASYLUM POLICY. IN JUNE 2016, THE EUROPEAN COUNCIL ENDORSED THE “MIGRATION FRAMEWORK PARTNERSHIP” (MPF), WHOSE PURPOSE IS TO ESTABLISH WIN-WIN PARTNERSHIPS WITH THIRD COUNTRIES OF ORIGIN AND TRANSIT OF MIGRANTS, PARTICULARLY IN AFRICA, TO BETTER MANAGE MIGRATION. DESPITE SOME POSITIVE STEPS FORWARD, THE MPF DOES NOT REPRESENT A REAL CHANGE OF DIRECTION, BUT RATHER THE LAST EVIDENCE OF AN APPROACH THAT HAS BEEN GOING ON SINCE THE END OF THE 1990’S. AS IN THE PAST, THE EU ACTION IS MAINLY CENTERED ON MEASURES AIMED TO CURB IRREGULAR MIGRATIONS, WHILE A COMPREHENSIVE AND COHERENT STRATEGIC PERSPECTIVE IS STILL LACKING. THIS PAPER ARGUES THAT, ONE YEAR AFTER THE ADOPTION OF THE MPF, THE EU STRATEGY IS QUESTIONABLE. SO FAR, DATA SHOW THAT EU POLICY HAS NOT PREVENTED MIGRANTS AND REFUGEES FROM ARRIVING TO EUROPE, NOR HAS IT INCREASED RETURNS OF IRREGULAR MIGRANTS. THE EU NEEDS TO REBALANCE MORE FAIRLY ITS RESPONSE TO MIGRATION, BY OPENING LEGAL MIGRATION CHANNELS AND INTRODUCING MONITORING MECHANISMS BOTH TO ASSESS THE IMPACT OF ITS ACTION AND TO ENSURE FULL COMPLIANCE WITH HUMAN RIGHTS INTERNATIONAL OBLIGATIONS.

KEYWORDS: EUROPEAN UNION – MIGRATION – ASYLUM – MIGRATION PARTNERSHIP FRAMEWORK

INTRODUCTION

In the last two years, the externalisation of migration and asylum policy has emerged as a key priority on the EU agenda. The rationale is to support third countries of origin and transit of migrants to stem migratory flows to Europe, and to remove the root causes of migration by advancing development projects. Albeit cooperation with third countries has become a EU mantra to address mixed migration (i.e. economic migrants and individuals in need of international protection), the question remains how cooperation applies in practice.

This paper aims to scrutinize the overall EU strategy. After a brief analysis of the origin and content of the EU approach, focusing on the 2016 *Migration Partnership Framework* (MPF), this article assesses the outcomes of the MPF, one year after its adoption,

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by ascertaining its effectiveness in deterring irregular migrations, as well as its compatibility with international human rights obligations.

MPF: THERE IS NOTHING NEW UNDER THE SUN

Presented as an innovative approach for a more systematic cooperation with non-EU countries in the domain of migration and asylum, the MPF is not really a novelty.

Back in 1999, the Tampere European Council officially embraced the so-called *comprehensive approach* to migration, namely a wider, holistic and proactive approach, which balances EU internal and external policies and combines *control measures* to tackle irregular migrants, ideally before they even reach the EU borders, with *preventive measures*, in order to confront the fundamental causes of migratory movements.² Thereafter, according to this perspective, the EU strategy has been translated into action. Particular reference is made to the *Global Approach to Migration*, first adopted in 2005,³ and the EU-AU Migration Dialogue, mainly the *Rabat Process*, launched in 2006.⁴

Following the Arab uprisings, in a context of increased migratory pressure towards Europe, the EU has strengthened its external migration policy. In May 2015, the European Commission presented the *European Agenda on Migration*, built upon the traditional assumptions (i.e. reducing migratory flows and developing legal migration).⁵ Cooperation with African countries is embedded in the 2014 *Khartoum Process*, and in the 2015 *EU-AU Valletta Summit*.⁶ In March 2016, in response to the Syrian crisis, the EU agreed with Turkey for rapid return of all migrants not in need of international protection crossing from Turkey to Greece.⁷

Here, it is worth stressing that the MPF set out in June 2016 is meant to collect, rationalise, and further develop previous actions and resources.⁸

Compared to the initiatives taken in the early 2000's, the MPF contains a positive new feature, as it frames relations with non-EU states through *compacts*, tailored to each partner country's needs, thus reflecting that countries of origin and transit of migrants face different challenges that require specific responses. The MPF is a platform to implement political packages, technical and legal agreements, making full use of all EU instruments. To date, the EU has elaborated compacts with a number of priority third countries, such as Niger, Nigeria, Mali, Ethiopia, and Senegal.⁹ The EU also plans to conclude compacts with, among others, Algeria, Egypt, Eritrea, Libya, and Sudan.

Nevertheless, the innovative nature of the MPF ends here. Despite the EU statements to the contrary, the *status quo* of migration and asylum policies remains mostly unaltered. Although terms and expressions have been revised from time to time (*comprehensive approach, deal, compact*), the aims and methods of the EU strategy have hardly changed: in return for economic assistance, the EU expects from its partners a firm control of their

² European Council, Presidency Conclusions, Tampere, 15/16.10.1999, SN 200/99, para 11.

³ Council of the EU, *Global Approach to Migration*, 13.12.2005, Doc 15744/05. In 2011, the Commission presented a renewed *Global Approach to Migration and Mobility (GAAM)*.

⁴ The *Rabat Process* was launched on 10/11.7.2006.

⁵ European Commission, *A European Agenda on Migration*, Brussels, 13.05.2015, COM (2015) 240 final.

⁶ The *Khartoum Process* was launched on 28.11.2014.

⁷ Council of the EU, *EU-Turkey Statement*, 18.3.2016, Press Release, 144/16.

⁸ European Commission, *A New Partnership Framework with third countries under the European Agenda on Migration*, 7.6.2016, COM(2016) 385 final. The European Council endorsed the proposal on 28.6.2016.

⁹ First compacts were concluded with Jordan (4.2.2016) and Lebanon (15.11.2016) in response to the Syrian crisis. The compacts focus on strengthening the economic resilience of Jordan and Lebanon, which host around 1,3 and 1,5 million Syrians, respectively. Financial support is provided by, *inter alia*, the *EU Regional Trust Fund in response to the Syrian Crisis* (€1 billion).

borders to curb migratory flows to Europe. The point is whether the EU commitment of win-win relationships with third countries really applies this time.

MPF OUTCOMES: THE CARROT AND STICK APPROACH

The main purpose of the MPF is to lay the foundations for a new balanced and mutually beneficial partnership with non-EU countries. The MPF includes actions to be undertaken both in the short term (aimed at increasing the return of irregular migrants and dismantling traffickers/smugglers' networks), and in the long term (by supporting development in third countries).¹⁰ However, as in the past, the imperative goal is to stem migration flows to Europe.

Notwithstanding the original intent, the 1999 Tampere Summit and the resulting measures revealed in their practical implementation a predominantly defensive stance on migration. In March 2016, the Court of Auditors stated that security and border protection constituted the chief elements in the EU migration spending until 2014, and this explained, at least partly, the reluctance by third countries to engage constructively in the migration domain.¹¹

Regarding the compacts so far concluded under the MPF, actions to restrain migratory movements and strengthen border controls continue to be a primary issue for the EU funding, while the EU action is still limited in addressing the push factors of migration.

Moreover, the compacts with third countries are marked by a renewed focus on conditionality. Conditionality has permeated the EU external policy since 2000. In June 2002, the Seville European Council introduced the concept of negative migration conditionality, thereby hampering financial assistance to non-EU countries in case of an "*unjustified lack of cooperation in joint management of migration flows*".¹² The use of conditionality emerges still more strongly from the MPF, which expressly refers to a mix of positive and negative incentives (*more for more / less for less*). Accordingly, the EU relations with third countries are guided by their "*ability and willingness to cooperate*" on border management and to ensure notably readmission and return.¹³

The same logic applies for the draft Regulation establishing a Resettlement Framework of non-EU nationals in need of international protection, given that the annual determination of third countries from which resettlement might take place would be based on a range of criteria, especially the capacity of third partners to tackle the massive inflow of migrants.¹⁴

Lastly, the EU funds on migration and asylum show an intricate set of budget lines, institutionally scattered among different actors. This leads to a lack of coordination and a duplication of efforts, making it difficult to measure the impact of each EU funding and to quantify exactly the overall EU spending.¹⁵ According to the Court of Auditors, the EU migration spending until 2014 suffered from an unclear strategy, poor monitoring, and gaps between supports to third countries' governments and tangible outcomes for migrants.¹⁶

¹⁰ Footnote 7, p. 6.

¹¹ European Court of Auditors, EU external migration spending in Southern Mediterranean and Eastern Neighbourhood countries until 2014, Special Report No 9/2016, 17.3.2016, para 36.

¹² European Council, Presidency Conclusions, Seville, 21/22.6.2002, Doc/02/13, para 36.

¹³ Footnote 7, p. 6.

¹⁴ European Commission, Proposal for a Regulation establishing a Union Resettlement Framework, 13.7.2016, COM(2016) 468 final, 2016/0225 (COD).

¹⁵ Clare Castillejo, *The EU Trust Fund for Africa: A Glimpse of the Future for EU Development Cooperation* (Bonn: German Development Institute, 2016), https://www.die-gdi.de/uploads/media/DP__22.2016.neu.pdf.

¹⁶ Footnote 10, para 48.

The MPF financing scheme is characterised by the same weakness. Under the MPF, financial aid for African countries is provided through the *EU Emergency Trust Fund for Africa* (EUTF) (2015-2019), set up at the 2015 EU-AU Valletta Summit,¹⁷ and the *External Investment Plan*, proposed by the European Commission in September 2016.¹⁸

The EUTF aim is both to overcome fragmentation in the EU migration budget, built on the existing *Rabat* and *Khartoum Processes*, and facilitate the fulfilment of the new compacts. However, its actual implementation raises a number of questions. Compared to the *EU Facility for Refugees in Turkey*, linked to the EU-Turkey deal (€3 billion + €3 billion by 2018),¹⁹ the EUTF (that covers 26 African countries) has a more limited budget, at present amounting €2.8 billion. The EU envisages mobilizing €8 billion by 2020, but this intent will be accomplished primarily by redirecting the current available development funds. Furthermore, to date, Member States' contributions have remained far from their official commitments, consisting only in 5% of the envisaged €1.8 billion.²⁰

As to the proposed *External Investment Fund*, it is not yet clear whether the European Commission will be able to unlock from its funds, as promised, over €40 billion until 2020, potentially reaching €62 billion.²¹

INTEGRATED BORDER MANAGEMENT: THE MYTH OF “ZERO IMMIGRATION” POLICY

Reflecting the security concerns of Member States, the EU has over time strengthened external borders controls both at the EU level, by preventing irregular flows to Europe, and the international level, by reinforcing the capacities of third countries to manage migration.

Concerning cooperation between Member States, attention is drawn to the EU naval operations in the Mediterranean Sea.

Among the missions coordinated by the EU border Agency FRONTEX, the Joint Operation *Triton*, that replaced the rescue Italian Operation *Mare Nostrum* in November 2014, marked the shift from *rescue* to *border* management, its main task being border control.²² On 26 May 2015, FRONTEX adopted a new operational plan for *Triton* with an increased budget, additional assets, and an expanded range of action (from 30 up to 138 nautical miles from the Italian coast, almost reaching the extent that had been previously covered by *Mare Nostrum*).²³ Despite these developments, the rationale behind its institution remains unchanged: *Triton*'s mandate is to support Italy with sea border surveillance,

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See https://eeas.europa.eu/sites/eeas/files/factsheet_ec_format_eu_emergency_trust_fund_for_africa_2017.pdf, accessed 15.07.2017.

¹⁸ European Commission, Strengthening European Investments for jobs and growth: Towards a second phase of the European Fund for Strategic Investments and a new European External Investment Plan, 14.9.2016 COM(2016) 581 final.

¹⁹ See https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/frit_factsheet.pdf, accessed 15.7.2017.

²⁰ European Commission, Member States and other donors' pledges, 3.7.2017, https://ec.europa.eu/europeaid/eutf-pledged-contribution-eu-member-states-and-other-donors-march-2017_en, accessed 15.7.2017.

²¹ European Commission, Towards a new Partnership Framework with third countries, Frequently Asked Questions, 7.6.2016, http://europa.eu/rapid/press-release_MEMO-16-2118_en.htm, accessed 15.7.2017.

²² On 18.10.2013, Italy launched the *Mare Nostrum* Operation in order to cope with the humanitarian emergency in the Sicilian Channel. In November 2014, the Joint Operation *Triton* replaced two Operations, *Hermes* and *Aeneas*. See Roberta Mungianu, “Frontex: Towards a Common Policy on External Border Control”, *European Journal of Migration and Law* 15 (2013), 359-385.

²³ See <http://frontex.europa.eu/news/frontex-expands-its-joint-operation-triton-udpbHP>, accessed 15.7.2017.

whereas rescue activities continue to be incidental, complementing the rescue operations conducted by Italy.²⁴

The EUNAVOR MED Operation *Sophia*, launched in June 2015, was conceived through a similar prism.²⁵ Its core task is to identify and capture vessels used by migrant traffickers or smugglers.²⁶ Finally, in October 2016 FRONTEX was renamed *European Border and Coast Guard Agency*, with the goal of increasing its effectiveness. Nevertheless, even if by 2020 the Agency budget has doubled (€322 million) and its staff has increased to approx. a thousand people, the change of FRONTEX's name has not been followed up by increased powers, because the Agency will continue to merely support the border activities of the Member States.²⁷

As to cooperation with third countries, the EU is fully engaged in the deployment of civilian missions to block migratory flows.

Since 2012, the EUCAP Sahel Niger assists the Nigerien authorities in improving their capacities to stem terrorism, organised crime and, from 2015, irregular migrations.²⁸

The EUBAM Libya, launched in May 2013, then downsized in 2014 (due to the security situation in Libya), received in February 2016 the mandate to support the Libyan authorities in the field of security sector reform, focusing on police, criminal justice, border security and migration.²⁹

In June 2016, Operation *Sophia* started training the Libyan Coast Guard and Navy, in order to reinforce their capabilities to curb trafficking and smuggling, to perform search and rescue activities at sea, and to upgrade security in Libyan territorial waters.³⁰

Besides the considerable financial costs, the integrated border management is neither sufficient nor effective. As a matter of fact, restrictive immigration policies have always failed to meet their stated objectives. Indeed, the unintended effect of strict border controls is the diversion of the migratory flows through other usually more dangerous routes, thereby increasing human trafficking.

OBSTACLES TO COOPERATION WITH THIRD COUNTRIES

Every year almost 500,000 foreign nationals are ordered to leave the EU, as they have entered or are staying irregularly. However, only less than 40% of them are sent back to their home country or to the country from which they travelled to the EU.³¹

The gap between the return decisions and their effective application have led the EU

²⁴ Efthymios Papastavridis, "Fortress Europe and Frontex: Within or Without International Law?", *Nordic Journal of International Law* 79 (2010), 75-111.

²⁵ Council of the EU, Decision (CFSP) 2015/972 of 22.6.2015 launching the EU military operation in the southern Central Mediterranean (EUNAVFOR MED), Official Journal 23.6.2015, L 157/51.

²⁶ To date, the Operation is in its second phase. The first phase intended to build a comprehensive understanding of smuggling activity and methods. Future phases, subject to the UN Security Council authorisation, will include taking operational measures inside coastal states territory.

²⁷ European Parliament and Council of the EU, Regulation (EU) 2016/1624 of 14.9.2016 on the European Border and Coast Guard, Official Journal 16.9.2016, L 251/1. See Sergio Carrera, *A European Border and Coast Guard. Addressing Migration and Asylum Challenges in the Mediterranean?* (Brussels: CEPS, 2010).

²⁸ Council of the EU, Decision 2014/482/CFSP of 22.7.2014 on the EU CSDP mission in Niger (EUCAP Sahel Niger), Official Journal 23.7.2014, L 217/31.

²⁹ Council of the EU, Decision 2016/207/CFSP of 15.2.2016, amending Decision 2013/233/CFSP on the EU Integrated Border Management Assistance Mission in Libya (EUBAM Libya), Official Journal 16.2.2016, L 39/45.

³⁰ Political and Security Committee, Decision (CFSP) 2016/1635 of 30.8.2016 on the commencement of the capacity building and training of the Libyan Coast Guard and Navy by the EU military operation in the Southern Central Mediterranean (EUNAVFOR MED operation SOPHIA), Official Journal 10.9.2016, L 243/11.

³¹ European Commission, EU Return Policy, 28.3.2014, COM(2014) 199 final.

to conclude with third countries the so-called *readmission agreements* (EURAs), i.e. agreements establishing procedures for the return of both own nationals and nationals of other countries in transit who do not, or no longer satisfy the conditions for entry to, or residence in the territory of the requesting party. The perspective of long and complex negotiations has induced the EU to include specific readmission clauses in international treaties concerning forms of association or cooperation, as a mean to encourage its partners to execute their readmission obligations avoiding the risk to lose the benefits foreseen by the whole treaty.

Since 1999 the EU has concluded 17 EURAs.³² The Cotonou agreement, which is the framework for the EU relations with ACP countries, also contains provisions dealing with the return of irregular migrants to their country of origin (article 13).

Nonetheless, the EU achievements are not very consistent. Negotiating an agreement can take several years, as in the case of Morocco where talks started in 2000 are still ongoing, with little prospect of a prompt conclusion. Non-EU states usually refuse to readmit citizens of other countries who have transited through their territory before reaching Europe. In addition, Member States often do not apply EURAs, opting for their own bilateral agreements, thus undermining the credibility of the EU readmission policy. Finally, EURAs are only partly respected by third countries: failure to issue travel documents to allow readmission, and other procedural obstacles limit deeply their effectiveness.

Especially after 2011, with a view to increase expulsion rates, the EU and its Member States for their part conclude, instead of formal readmission agreements, new instruments and tools on readmission, such as informal deals, non-legally binding memoranda and standard operating procedures. The recourse to these new instruments intends to overcome problems faced in negotiating EURAs. Informal methods of cooperation allow the EU and its Member States to bypass both the legal requirements of article 218 TFEU, under which the consent of the European Parliament is necessary for concluding EURAs, and domestic debates. Moreover, non-EU partners have no interest in publicly cooperating with the EU, because EURAs do not meet the favour of their populations.

Improving readmission through formal or informal instruments is also a basic aim of the MPF. However, one year after its adoption, the progress reports on MPF reveal an incoherent picture.³³

Cooperation with Niger, a key transit country of migrants, is effective enough. There has been a clear decline in departures of migrants from Agadez (from 70,000 departures in May 2016 to about 6,500 in January 2017). However, there are reasons to be cautious, as potential alternative routes need to be monitored both via Niger and through its neighbouring countries.

Cooperation with Nigeria is complicated. Nigeria is an important country of origin of migrants, with over 23,000 illegal entries in 2015, and more than 37,000 in 2016. Until April 2017, about 5,200 Nigerians have already entered the EU irregularly. In terms of readmission, cooperation is uneven. In 2015, only 28% of return decisions resulted in effective return. In 2016, the return rate is even lower (26.5%). Although negotiations on a EURA opened in October 2016, the second round of talks, planned for December 2016, has been postponed several times by Nigeria.

Partnership with Senegal is problematic. In 2015, over 6,300 migrants entered the EU, while 10,300 were registered in 2016, and approximately 400 already arrived in Italy since

³² Sergio Carrera, *Implementation of EU Readmission Agreements: Identity Determination Dilemma and the Blurring of Rights* (Cham, Switzerland: Springer International Publishing AG, 2016).

³³ European Commission, Fourth Progress Report on the Partnership Framework with third countries under the European Agenda on Migration, 13.6.2017, COM(2017) 350 final.

April 2017. In 2016, despite an increase in return decisions, the return rate dropped from 12.5% in 2015 to 9% in 2016.

Cooperation with Mali, a country of origin and transit of migrants, is quite inconsistent. Over 6,500 migrants in 2015, 10,000 in 2016, and 1,800 until April 2017 entered the EU. A formal EURA was reached in December 2016, but Mali has not yet signed Operating Procedures on readmission. The number of return decisions in 2016 remains stable as in 2015, but only a small proportion of migrants have been effectively returned (11.4% in 2015, 4.8% in 2016).

Lastly, cooperation with Ethiopia is controversial. In 2015, about 2,700 migrants arrived from Ethiopia, while 3,600 irregular entries were recorded in 2016. In spite of these figures, progress on return is very low (12.2% in 2015, 9.8% in 2016).

THE LACK OF INCENTIVES FOR THIRD COUNTRIES

The lack of incentives is the main reason for excessive delay in negotiating EURAs and, more generally, for third countries' reluctance to cooperate with the EU. The EU should take into account more seriously the third countries' point of view on the migration issue and should better understand the underlying causes driving migration.

At least three factors need attention. Firstly, less irregular migration implies for third countries a sharp reduction of the remittance flows, the amount of which (over \$500 billion) overshadows the overall volume of development aid, becoming a reliable source of external finance for many non-EU countries.³⁴ Secondly, irregular migration nourishes an informal illegal economy that generates billions of euros, representing a significant resource for local communities, as the situation in Niger clearly demonstrates.³⁵ Thirdly, the EU should change the perspective according to which migration can be mitigated by allocating development aid. Development, at least in the short term, leads to a surge in migration, in so far the economic growth increases people's aspirations to migrate to wealthier economies in Europe. The so-called *migration hump* phenomenon tends to disappear only at a later stage when the development in the country of origin reaches a more stable level.³⁶

That is why the EU should rebalance its strategy, by offering a broader package of incentives to third countries.

Good results have been achieved so far in the assisted voluntary return and reintegration (AVVR) support.³⁷ However, the lessons learnt from the past indicate that the AVVR programs often overlap, thereby creating confusion around beneficiary targeting and substantial distortions, while insufficient post-return monitoring hinders a proper assessment of their results.

Equally, the EU should support African sub-regional organisations with a greater financial contribution to better manage regular migration, since it is widely known that in Africa 84% of movements are intra-regional.³⁸

The real added value of the EU strategy would be to provide credible avenues of legal migration, in terms of worker mobility, visa facilitations, recognition of diplomas and qualifications, as well as humanitarian admission for persons in need of international

³⁴“Annual Remittances Data,” World Bank, last modified April 2017,

<http://www.worldbank.org/en/topic/migrationremittancesdiasporaissues/brief/migration-remittances-data>.

³⁵ Fransje Molenaar, *Irregular Migration and Human Smuggling Networks in Niger*, CRU Report (The Hague: Clingendael, 2017).

³⁶ Vincent Chetail, “Paradigm and Paradox of the Migration-Development Nexus: The New Border for North-South Dialogue”, *German Yearbook of International Law* 52 (2008), 190.

³⁷ To date, more than 4,000 migrants returned from Libya to their countries of origin.

³⁸ The EU supports the free movement of persons in the ECOWAS region (€26 million) and in the IGAD region (€10 million).

protection. In its official statements, the EU has several times endorsed the importance of proposing legal migration channels. But these assertions are not reflected in practice. The *Global Approach to Migration and Mobility*, adopted by the European Commission in 2011, had only limited success and a coherent approach continues to be lacking.³⁹ The *European Agenda on Migration* in 2015, although recognizes that “a clear and well implemented framework for legal pathways to entrance in the EU will reduce push factors towards irregular stay and entry”, contains just vague promises.⁴⁰ Similarly, the issue is not dealt with in detail by the MPF, but only regarded as a positive incentive for third countries that cooperate in fighting against irregular migration.⁴¹ The Member States’ resistance to offer labour opportunities to third country nationals often undermines the EU coherence in this field, thus affecting the overall credibility of the EU external action.

MPF COMPATIBILITY WITH HUMAN RIGHTS OBLIGATIONS

The EU external migration policy *per se* does not violate human rights obligations, since the EU instruments formally comply with international norms, enshrined in the EU Treaty and legislation. Nevertheless, in practice no clear mechanisms ensure that human rights are fully respected at any time. The risk is that containment initiatives, aimed at curbing migration flows, could reduce the protection for refugees and forced migrants.

Concerning borders controls, the EU is bound by the principle of *non-refoulement*, under which no return to the country of origin or transit can take place if the concerned person is liable to be subjected to inhuman or degrading treatment.⁴² Consequently, the EU objective is to prevent arrivals, by getting third countries to intercept migrants before they reach the EU borders, so that the non-refoulement obligation would not be triggered. Then, the training offered to the Libyan Coast Gard and Navy allows Member States to *circumvent* their human rights obligations, given that migrant boats intercepted at sea are taken back to Libya by Libyan vessels. Similar concerns raise the EU-Turkey deal, whose objective is to create a *buffer zone* outside the EU, by calling upon Turkey to “take any necessary measures to prevent new sea or land routes for illegal migration opening from Turkey to the EU”.⁴³

As to EURAs and other informal agreements, although they include, to a variety of degrees, express reference to international human rights norms, in their actual implementation they generally lack monitoring and accountability measures, thereby threatening the human rights of migrants and asylum-seekers.⁴⁴ A key weakness of EURAs is that they do not prevent the so-called *domino effect*, occurring if the third country of return expels one person to a state where he/she could be subjected to inhuman and degrading treatment.

Here again the EU-Turkey deal is instructive. Formally, the deal prohibits collective expulsions, requiring Greek authorities to process any application for asylum: only migrants not applying for asylum or whose application has been declared unfunded or inadmissible

³⁹ See, for example, the Directive on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment (2009/50/EC of 25.5.2009) and the Directive for the purpose of employment as seasonal workers (2014/36/EU of 26.2.2014).

⁴⁰ See footnote 4, p. 6.

⁴¹ See footnote 7, p. 6 and 8.

⁴² See European Court of Human Rights, *Case of Hirsi Jamaa and Others v. Italy* (Application no. 27765/09), Judgment 23.2.2012.

⁴³ See footnote 6, point 1. Since its implementation, the number of refugees and migrants going to Europe via Turkey has consistently decreased (from around 885,000 in 2015 to 9,000 in the first six months of 2017). See European Commission, Sixth Report on the Progress made in the implementation of the EU-Turkey Statement, 13.6.2017, COM(2017) 323 final.

⁴⁴ European Commission, Evaluation of EU Readmission Agreements, 23.2.2011, COM(2011) 76 final, p. 4.

will be returned to Turkey. Despite this, the deal entails two problems. On the one hand, according to official data, over 60,000 people, mostly from Syria, Iraq, and Afghanistan, are stranded on Greek islands, waiting for asylum claims to be processed, and still living in overcrowded migrant reception centres.⁴⁵ On the other hand, until February 2017, the number of migrants returned to Turkey was close to 1,500, including about 60 Syrians.⁴⁶ But Turkey can hardly be considered a *safe third country*, as it retains a geographical limitation to its ratification of the 1951 UN Refugee Convention, which means that only those coming from European countries can be given refugee status. Instead, since October 2014 Turkey has placed Syrian refugees under a temporary protection regime, which incidentally excludes other nationalities.

Concerning the compacts concluded under the MPF, the EU aim is to provide third countries with significant resources to take charge of migrants and asylum seekers. However, the EU efforts have had so far a very limited impact. Libya is a key test in this respect. In February 2017, the European leaders announced a plan to finance migration projects in order “to ensure adequate reception capacities and conditions in Libya for migrants”.⁴⁷ Nevertheless, according to the UN, the situation in Libya (which is not a contracting party to the Refugee Convention) constitutes a human rights crisis, where migrants are subjected to arbitrary detention, torture, unlawful killings, and sexual exploitation.⁴⁸

CONCLUSIONS

Past and recent experience shows that the EU strategy continues to be mainly focused in containing migratory flows, while development assistance is regarded as a reward for countries that honour their commitments to curb irregular migration. However, migration is not a problem to be solved only with draconian and hard-hitting actions. Migration is a complex phenomenon, with no prospects of ceasing in the coming decades, that requires a balanced combination of measures and a mutual beneficial cooperation between the EU and third states.

At least, three problems still persist.

Bearing in mind the different EU policies on migration and the distribution of external competences between the EU and its Member States, increased *coordination* and better *rationalisation* are essential to avoid diversion from declared objectives, financial fragmentation, duplication of efforts and lack of transparency, thereby ensuring further effectiveness of the EU strategy.

A better *balance* between the EU priorities is needed. Strengthening the external borders, increasing returns of irregular migrants, and reinforcing third countries’ capacities to manage migration are the legitimate objectives of the MPF, to the extent that any failure to meet these targets would cast a shadow over the EU authoritativeness. Notwithstanding this, the opening of legal migration channels, both for humanitarian and non-humanitarian reasons, would address the interests of third countries, so rebalancing relationships and reinforcing the coherence of the EU external policies.

⁴⁵ National Statement of Greece at the 67th Executive Committee of the UNHCR, <http://www.unhcr.org/57f784867.pdf>, October 2016.

⁴⁶ The returned persons had received negative asylum decisions or had not applied for asylum in the first safe country.

⁴⁷ European Council, Malta Declaration on the external aspects of migration: addressing the Central Mediterranean route, 3.2.2017, <http://www.consilium.europa.eu/en/press/press-releases/2017/02/03-malta-declaration/>, accessed 15.7.2017.

⁴⁸ UN Mission Support in Libya and Office of the UN High Commissioner for Human Rights, *Detained and Dehumanised. Report on human rights abuses against migrants in Libya*, 13.12.2016, http://www.ohchr.org/Documents/Countries/LY/DetainedAndDehumanised_en.pdf, accessed 15.7.2017.

Lastly, *monitoring* and follow-up mechanisms of the EU activities (such as funded projects, joint border operations, and EURAs) are required in order to assess their actual impact, as well as their compliance with human rights obligations. This issue arises in particular in relation to the migration compacts concluded under the MPF. Given their non-binding and informal character, these packages have never been presented, debated, nor endorsed by the European Parliament, thus escaping from the prerogatives of political monitoring of this Institution.

REFERENCES

1. **Carrera, Sergio.** *A European Border and Coast Guard. Addressing migration and asylum challenges in the Mediterranean?*. Bruxelles: CEPS, 2010;
2. **Carrera, Sergio.** *Implementation of EU Readmission Agreements: Identity Determination Dilemma and the Blurring of Rights.* Cham (Switzerland): Springer International Publishing AG, 2016;
3. **Castillejo, Clare.** *The EU Trust Fund for Africa: a glimpse of the future for EU development cooperation.* Bonn: German Development Institute, 2016, Discussion Paper 22/2016, https://www.die-gdi.de/uploads/media/DP__22.2016.neu.pdf;
4. **Chetail, Vincent**“ Paradigm and Paradox of the Migration-Development Nexus: The New Border for North-South Dialogue.” *German Yearbook of International Law* 52 (2008): 183-215;
5. **Council of the European Union,** Global Approach to Migration, 13.12.2005, Doc 15744/05;
6. **Council of the European Union,** Decision 2014/482/CFSP of 22.7.2014 on the EU CSDP mission in Niger (EUCAP Sahel Niger), Official Journal 23.7.2014, L 217/31;
7. **Council of the European Union,** Decision (CFSP) 2015/972 of 22.6.2015 launching the EU military operation in the southern Central Mediterranean (EUNAVFOR MED), Official Journal of the European Union 23.6.2015, L 157/51;
8. **Council of the European Union,** Decision 2016/207/CFSP of 15.2.2016 amending Decision 2013/233/CFSP on the EU Integrated Border Management Assistance Mission in Libya (EUBAM Libya), Official Journal 16.2.2016, L 39/45.
9. **Council of the European Union,** EU-Turkey Statement, 18.3.2016, Press Release, 144/16;
10. **European Commission,** Evaluation of EU Readmission Agreements, 23.2.2011, COM(2011) 76 final;
11. **European Commission,** EU Return Policy, 28.3.2014, COM(2014) 199 final;
12. **European Commission,** A European Agenda on Migration, Brussels, 13.05.2015, COM (2015) 240 final;
13. **European Commission,** A New Partnership Framework with third countries under the European Agenda on Migration, 7.6.2016, COM(2016) 385 final;
14. **European Commission,** Towards a new Partnership Framework with third countries, Frequently Asked Questions, 7.6.2016, available at: http://europa.eu/rapid/press-release_MEMO-16-2118_en.htm, accessed on 15.7.2017;
15. **European Commission,** Strengthening European Investments for jobs and growth: Towards a second phase of the European Fund for Strategic Investments and a new European External Investment Plan, 14.9.2016 COM(2016) 581 final;
16. **European Commission,** Fourth Progress Report on the Partnership Framework with third countries under the European Agenda on Migration, 13.6.2017, COM(2017) 350 final;
17. **European Commission,** Sixth Report on the Progress made in the implementation of the EU-Turkey Statement, 13.6.2017, COM(2017) 323 final;
18. **European Commission,** Member States and other donors pledges, 3.7.2017, available at: https://ec.europa.eu/europeaid/eutf-pledged-contribution-eu-member-states-and-other-donors-march-2017_en, accessed on 15.7.2017;
19. **European Commission,** Proposal for a Regulation establishing a Union Resettlement Framework, 13.7.2016, COM(2016) 468 final, 2016/0225 (COD);
20. **European Council,** Presidency Conclusions, Tampere, 15/16.10.1999, SN 200/99;
21. **European Council,** Presidency Conclusions, Seville, 21/22.6.2002, Doc/02/13;
22. **European Council,** Malta Declaration on the external aspects of migration: addressing the Central Mediterranean route, 3.2.2017, available at: <http://www.consilium.europa.eu/en/press/press-releases/2017/02/03-malta-declaration/>, accessed on 15.7.2017;
23. **European Court of Auditors,** EU external migration spending in Southern Mediterranean and Eastern Neighbourhood countries until 2014, Special Report No 9/2016, 17.3.2016;
24. **European Court of Human Rights,** *Case of Hirsi Jamaa and Others v. Italy* (Application no. 27765/09), Judgment, 23.2.2012;
25. **European Parliament and Council of the European Union,** Regulation (EU) 2016/1624 of 14.9.2016 on the European Border and Coast Guard, Official Journal 16.9.2016, L 251/1;
26. **Molenaar, Fransje.** *Irregular Migration and Human Smuggling Networks in Niger*, CRU Report. The Hague: Clingendael, 2017;
27. **Mungianu, Roberta.** “Frontex: Towards a Common Policy on External Border Control.”, *European Journal of Migration and Law* 15 (2013): 359-385;

28. **Papastavridis, Efthymios.** “Fortress Europe and Frontex: Within or Without International Law?.” *Nordic Journal of International Law* 79 (2010): 75-111;
29. **Political and Security Committee of the European Union,** Decision (CFSP) 2016/1635 of 30.8.2016 on the commencement of the capacity building and training of the Libyan Coast Guard and Navy by the EU military operation in the Southern Central Mediterranean (EUNAVFOR MED operation SOPHIA), Official Journal 10.9.2016, L 243/11;
30. **United Nations Mission Support in Libya and Office of the United Nations High Commissioner for Human Rights,** *Detained and Dehumanised*, Report on human rights abuses against migrants in Libya, 13.12.2016, available at: http://www.ohchr.org/Documents/Countries/LY/DetainedAndDehumanised_en.pdf, accessed on 15.7.2017;
31. **World Bank.** “Annual Remittances Data.” Last modified April 2017. <http://www.worldbank.org/en/topic/migrationremittancesdiasporaissues/brief/migration-remittances-data>.