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THE EU'S EXTERNAL MIGRATION POLICY:
TOWARDS WIN-WIN-WIN PARTNERSHIPS

Nicole Koenig | *Senior Research Fellow, Jacques Delors Institut - Berlin*

SUMMARY

While the EU member states continue to be divided on the reform of the Common European Asylum System, they converged around the goal of strengthening the EU's external migration policy. Unprecedented migratory flows in 2015 led the EU to refocus this policy area on "tailor-made", "comprehensive" and "mutually beneficial" migration partnerships. This policy paper assesses the EU's crisis-born approach, reviews policy changes and questions whether the new partnerships are truly of mutual benefit.

The EU's crisis response mode led to an immense **prioritisation of migration** across policy areas and external partners. It entailed an **increase and flexibilisation of the resources** dedicated to internal and external EU migration policy. The EU's new approach holds the promise of increased coherence and efficiency. However, the renewed focus on **conditionality** also entails the risk of a short-sighted subordination of important EU foreign and development policy objectives to the short-term priority of migration control.

To assess how the new approach plays out in practice, this paper zooms in on three cases, namely Turkey, Mali and Libya. They stand for different categories of partners: **Turkey** is an EU candidate and major transit country; **Mali** is a country of origin and transit and one of the priority countries of the EU's new Migration Partnership Framework; **Libya** is among the most challenging and proximate transit countries.

These three cases show that migration partnerships between the EU and third countries often neglect the perspective and rights of migrants. They illustrate the practical limitations and political side effects of subordinating core EU foreign and development policy aims to migration control. The examples of Mali and Libya indicate that the EU will have to invest more to compensate third countries for the costs related to their cooperation in migration control.

The EU should move **from win-win to win-win-win partnerships** that take the migrants' costs and benefits fully into account. Concretely, it should:

1. **Rebalance its comprehensive approach** to migration and establish real synergies between its foreign, development and migration policies and their respective aims.
2. Use the window of opportunity created by the (waning) crisis response mode to raise **the share of collective funds** dedicated to external migration policy.
3. **Introduce systematic human rights impact assessments** of its migration partnerships and strengthen the human rights dimension of EU missions or operations at the intersection of security and migration.
4. **Increase the EU's annual resettlement contribution** to at least 20,000 places and increase member state compliance through adequate financial incentives from the EU budget.

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INTRODUCTION

The unprecedented inflow of migrants that the European Union (EU) was facing in 2015 has pushed migration to the very top of the political agenda. While there is still much disagreement on the internal dimension of EU migration and asylum policy, the EU member states converged around the aim of cooperating more closely with countries of origin and transit. The EU has been building up a complex architecture of external migration governance since the early 1990s. The so-called migration "crisis" illustrated its weaknesses and raised the need for a more effective approach.

The EU thus adapted its external migration toolbox and refocused its efforts on comprehensive and tailor-made bilateral migrations partnerships. According to the EU's High representative for foreign affairs and security policy and Vice-President of the Commission, Federica Mogherini, the EU "moved from an old kind of approach to a mutually benefiting win-win partnership… : a two-way partnership where each side has its own responsibilities and we look at the best possible ways in which we can, together, manage a complex phenomenon" of migration[1].

Initially limited to a few countries at the EU's southern borders, the bloc is now seeking to extend this new approach to a variety of partners in the broader neighbourhood. It is thus a good moment to review this approach and draw lessons from the first year of implementation. Does the EU truly hold its promise of rebalanced win-win partnerships and how does the promise of comprehensiveness play out in practice?

> "THE EU SHOULD EXTEND THE NOTION OF WIN-WIN TO WIN-WIN-WIN PARTNERSHIPS."

In this paper, we argue that the EU should extend the notion of win-win to win-win-win partnerships. It should do more to include the perspective and interests of migrants that are often the victims of these migration partnerships, but have no seat at the negotiating table. The EU's emphasis on the comprehensive approach should not serve as an excuse to subordinate fundamental foreign policy, development aid and humanitarian goals to the short-term priority of migration control. The EU should instead work towards synergies that creatively link external policies and instruments in a way that they generate win-win-win outcomes. Finally, the EU member states will have to invest much more political capital and financial resources if they really want to change the calculus of third state governments and migrants and prevent future migration "crises".

This policy paper starts by reviewing the adaptation of the EU's external migration toolkit (part one). Part two unpacks the notion of win-win partnerships and adds the potential benefits and costs for migrants. The third part zooms in on three telling cases—Turkey, Mali and Libya—to illustrate the practical implications of the EU's new approach. The paper concludes with a summary of do's and don'ts.

1. Federica Mogherini, "Remarks by the High representative/Vice-President at the press conference on the progress under the Migration Partnership Framework", Brussels, 18 October 2016.

1. From external migration policy to crisis response

Migration has been a key component of the EU's external action since the 1990s. What is the "old kind of approach" that High representative Mogherini spoke of? And how has the EU's crisis mode changed it?

1.1. The traditional toolkit and its weaknesses

The "old approach" was already based on a broad toolbox for external migration management. From 2005 onwards, these tools were grouped under the Global Approach to Migration and Mobility (GAMM), "designed to address all relevant aspects of migration in a balanced and comprehensive way, in partnership with non-EU countries"[2]. The GAMM is built on four pillars and overarching objectives:

1. Fostering legal migration and well-managed mobility
2. Preventing irregular migration and eradicating human trafficking
3. Maximising the positive impact of migration on development
4. Promoting international protection

These pillars have been implemented through range of political, legal and operational instruments (see Table 1).

TABLE 1 ► The EU's external migration toolbox

TYPE OF INSTRUMENT	CONCRETE TOOLS	EXAMPLES
Political	Regional policy dialogues	Rabat Process (North, West and Central Africa)
	Bilateral policy dialogues	with countries in the Western Balkans
	Mobility Partnerships	Morocco
	Common Agendas on Migration and Mobility	Ethiopia
Legal	Visa facilitation and readmission agreements	Cape Verde
	Migration clauses in global agreements	Association Agreement with Ukraine
Operational	Capacity building	Training of the Libyan Coast Guard
	Programme and project support	over €1bn between 2004 and 2013
	Regional Development (and Protection) Programmes	African Great Lakes Region
	Frontex working arrangements	Turkey
	Cooperation with the European Asylum and Support Office (EASO)	Jordanian authorities

Source: Based on Garcia Andrade et. al. (2015)

The implementation of the GAMM has been widely criticised. Its limited effectiveness was often traced back to the lack of horizontal and vertical coherence. External migration governance cuts across various policy areas at the EU level including migration and asylum, development cooperation, humanitarian aid, neighbourhood policy as well as the Common Foreign and Security Policy (CFSP). Competences and funds are thus widely spread. This compartmentalization has led to **horizontal coherence challenges** between EU-level actors and policies. The coordination of a multitude of actors in the European Commission and the European External Action Service (EEAS) with differing procedures and priorities has caused overlaps and financial fragmentation[3].

The fact that migration and asylum are fields of shared competence increases this complexity and has given rise to **vertical coherence challenges** between the EU and the member states. Without sustained national

2. European Commission, "Communication on the Global Approach to Migration and Mobility", 2005
3. Leonhard den Hertog, "Money Talks: Mapping the funding for EU external migration policy", CEPS Paper, No. 95, 2016

commitment and contributions, the EU level often lacked adequate financial and mobility-related incentives[4]. The member states have been reluctant to open legal pathways for migrants, a field in which they retain the exclusive competence. This applied to labour migration as much as to humanitarian resettlement schemes or visas. The lack of convincing incentives explains why some negotiations on readmission agreements, for instance with Morocco, were dragging on for years while others, notably with Algeria, failed altogether.

> "THE SPECIFIC INTERESTS AND PERSPECTIVES OF THE THIRD COUNTRIES HAVE NOT RECEIVED ENOUGH ATTENTION."

On paper, the GAMM aims to strike a balance between the interests of the EU (mainly pillar two), the third countries (mainly pillars one and three) and migrants (mostly pillar four). However, in practice, there has been an imbalance due to the **disproportionate focus on the fight against irregular migration.** This imbalance has also been reflected in the EU's funding priorities[5]. The EU has always emphasised the notion of partnership in the GAMM, but as the relatively uniform character of the Mobility Partnerships indicated, the specific interests and perspectives of the third countries have not received enough attention.

1.2. Adjusting the toolkit

For a long time, it was possible to neglect the GAMM's weaknesses. Migratory flows were largely manageable and only really affected a few member states at the EU's external borders. This changed in 2015 when over one million people reached the EU irregularly, calling the functioning of the whole Schengen system into question. When a smuggling boat drowned off the Libyan coast on 19 April 2015, leaving hundreds of migrants headed to Europe dead, the EU switched into crisis response mode.

This crisis response mode led to an **immense prioritisation of migration** across policy areas and partners. With the special European Council meeting on 23 April 2015, the EU's internal and external migration policy became "Chefsache". The topic remained high up the agenda of subsequent European Council as well as Foreign Affairs and Justice and Home Affairs Council meetings[6]. The EU's external migration-related crisis response had a broad geographic focus including Turkey, Lebanon and Jordan, the Western Balkans as well as Sub-Saharan Africa.

Part of the EU's crisis response was the **increase and flexibilisation of collective funding**. In line with the EU's external priorities, three new funding instruments were created:

- The Facility for Refugees in Turkey (2016-17): €1 billion from the EU budget + €2 billion from the member states ;
- The EU Regional Trust Fund in Response to the Syrian Crisis (2015-19): €500 million from the EU budget + €500 million from the member states or other donors ;
- The EU Emergency Trust Fund for stability and addressing the root causes of irregular migration and displaced persons in Africa (2015-20); €1.8 billion from the EU budget + €1.8 billion from the member states.

The EU used these instruments to flexibly pool funds from the member states as well as various EU budget envelopes including humanitarian and development aid, the European Neighbourhood Policy Instrument and the Instrument for Pre-Accession.

The EU's crisis response was also marked by a renewed focus on **transactional bilateral migration partnerships**. In October 2015, the EU agreed on a Joint Action Plan with Turkey aimed at a more concerted response to migratory challenges. The Valletta Summit in November 2015, bringing European and African Heads of State or Government together, was to be followed up by bilateral 'High-Level Dialogues' on migration. In early 2016, the EU offered Jordan and Lebanon bilateral migration compacts. In February 2016, the

4. Paula García Andrade and Iván Martín, "EU Cooperation with third countries In the field of migration", Study for the European Parliament, LIBE Committee, October 2015, p. 33
5. Leonhard den Hertog, "Money Talks: Mapping the funding for EU external migration policy", CEPS Paper, No. 95, 2016
6. For a good overview of the European Council and Council meetings related to migration in 2015-16 see: European Council, "Timeline – response to migratory pressures", 2017

European Council suggested institutionalising this approach by developing comprehensive incentive packages for relevant third countries of origin and transit aimed at "ensuring effective returns and readmission"[7].

TABLE 2 ► Objectives of the EU's Migration Partnership Framework

SHORT-TERM OBJECTIVES	LONG-TERM OBJECTIVES
• Save lives in the Mediterranean sea • Increase the rate of returns to countries of origin and transit • Enable migrants and refugees to stay close to home and to avoid taking dangerous journeys	• Address the root causes of irregular migration and forced displacement • Foster sustainable development

Source: European Commission (2016)

The EU-Turkey Statement agreed on 18 March 2016, often referred to as "EU-Turkey deal", became the hallmark example for this new approach. It was also a model for the Commission Communication of 7 June 2016 establishing a new Migration Partnership Framework. Setting a range of short- and long-term objectives (see Table 2)[8], the Communication presented comprehensive and tailor-made migration compacts as "the key components of the overall relationships between the EU and third countries of origin or transit". Mali, Nigeria, Niger, Senegal, and Ethiopia were identified as priority partners. The reach of this new approach was later extended to a broad range of countries including, for instance, Libya, Afghanistan, and Pakistan. The Communication also suggested creating an External Investment Plan, supposed to leverage up to €88 billion on the basis of relatively small EU and member state contributions.

The Migration Partnership Framework[9] was marked by an **emphasis on conditionality**. It suggested using positive incentives ("more for more") and sanctions ("less for less") in light of the third countries' willingness to cooperate on migration management. When the European Council endorsed the Communication in June it stressed that "cooperation on readmission and return will be a key test of the partnership"[10]. Both the Commission and the European Council only mentioned international protection and legal migration in rather vague terms[11].

This emphasis on conditionality was mirrored in the subsequent Commission proposal for an EU Resettlement Framework. According to this proposal, the Council would agree on annual resettlement plans comprising the maximum number of resettlement places, their distribution among member states, and geographic priorities. The proposal also included "targeted resettlement plans", which could be integrated within the EU's new tailor-made incentive packages. These plans would depend on a range of criteria, notably the ability and willingness of third countries to curb irregular migration towards the EU and cooperate on readmission and return.

To sum up, the EU's crisis response mode led to an immense prioritisation of migration, an increase and flexibilisation of funding, and a renewed focus on transactional bilateral migration "deals". The EU's emphasis on conditionality risks reinforcing the GAMM's existing bias towards the fight against irregular migration. At the same time, the new approach holds the promise of greater coherence as well as more tailored incentives. According to the European Commission, the keyword of this new approach is "partnership". This is not a new notion in the EU's external migration governance. The real question is whether the EU's promise of win-win packages truly holds this time.

7. European Council, "Conclusions", 18-19 February 2016
8. European Commission, "Communication on Establishing a New Partnership Framework with Third Countries, Under the European Agenda on Migration", 2016
9. European Commission, "Proposal for a Regulation establishing a Union Resettlement Framework and amending Regulation (EU) No 516/2014", Brussels, 13 July 2016
10. European Council, "Conclusions", 28 June 2016.
11. Stefan Lehne, "Upgrading the EU's migration partnerships", Carnegie Europe, November 2016

2. What does win-win(-win) mean?

From a rationalist perspective, the notion of win-win entails a fair balance of benefits and costs. How does this play out in the context of the EU's new migration partnerships? Benefits and costs are as diverse as the EU member states, third countries and their respective "migration profiles". Nevertheless, some generic (and necessarily simplified) categories can be distinguished[12]. This overview does not only identify the interests of the two negotiating parties (win-win), but adds those of the migrants who are traditionally not sitting at the negotiating table (win-win-win).

2.1. EU interests

> "THE REDUCTION OF IRREGULAR IMMIGRATION STANDS OUT AS A CLEAR EU PRIORITY."

The reduction of irregular immigration stands out as a clear EU priority. In the "deliverables" of the new migration partnerships, strong emphasis is set on cooperation as well as formal **readmission and return** agreements. A second common interest is enhanced third-country cooperation in the **fight against human smuggling and trafficking**. A third and closely related aim is the **prevention of perilous journeys and casualties** in the Mediterranean. The EU's indicators for measuring short-term progress of the migration partnerships reflect these priorities: return and readmission rates; transit flow; the number of casualties and new arrivals in Europe.

The EU's longer-term interest is the rather vague notion of **tackling the root causes of migration**, which can be divided into two main sub-categories. The first is sustainable development comprising good governance, poverty reduction and a specific focus on job creation for youth. The second is (regional) security and stability including cooperation on counter-terrorism, conflict prevention and the countries' increased resilience in relation to food security or the consequences of climate change.

EU migration partnerships entail costs that can be divided into three categories:

1. The first are the **material costs** related to incentive packages. However, these are arguably lower than the costs associated with the reception and integration of migrants in Europe. In Germany alone, the government's annual expenditure amounts to roughly €22bn[13].

2. The second category comprises **reputational risks**. In a non-paper of March 2016, the EEAS and the Commission for instance warned of the "reputational risks" of engaging with Sudan in light of ongoing violent conflicts, the lack of political space, widespread human rights violations and its reputation as a sponsor of terrorism.

3. The third type of costs is **power-related**. Rebalanced partnerships entail giving the other side more leverage over the EU and thus also blackmail potential. One example from the past was the repeated threat by Libya's Colonel Muammar Gaddafi to "flood" Europe with African migrants.

2.2. Third country interests

The benefits for third countries are closely linked to the incentives the EU is willing and able to bring to the table. The first is advancing in the **EU accession** process. This only applies to a limited number of countries, notably

12. The categorisation is based on the 2015 Valletta Action Plan, European Council and Council Conclusions as well as leaked EU non-papers, progress reports and country factsheets published in the course of 2016.
13. Die Welt, "Flüchtlingskrise kostet Deutschland jährlich 22 Milliarden Euro", 27 January 2017

Turkey and candidate or potential candidate countries in the Western Balkans. However, it is worth mentioning it as the so-called "carrot of enlargement" is widely considered to be among the EU's most powerful positive incentives.

Other traditional EU incentives can be summarised under the terms **money and markets**. Financial and technical assistance is of course a major EU incentive. "Migration-sensitive" development aid is particularly attractive for countries with a high degree of aid dependence such as Mali or Afghanistan. Others such as Ethiopia openly reject aid conditionality and are keen to increase EU investment in the private sector. Another important incentive is preferential access to the Single Market, for instance through a relaxation of the rules of origin.

The EU also portrays **security cooperation** as part of its comprehensive incentive packages. EU support to the security sector is in demand as many of the key transit and origin countries are affected by regional instability, intra-state conflict, and terrorism. One example is Sudan's interest in EU support in managing its border with Libya and containing the spread of Da'esh.

Whereas the EU fears reputational losses, some third countries view migration-related cooperation with the EU as a way of generating **reputational gains**. According to leaked EU non-papers of March 2016, Ethiopia and Sudan are both interested in the migration partnerships as a means to improve their international standing and legitimacy.

To a certain extent, third countries share the EU's interest in fighting irregular migration. Major transit countries have an interest in better border control to curb irregular migration, often associated with economic or security-related destabilisation. Meanwhile, origin countries have an interest in **preventing brain drain**.

However, there is another side of the medal, leading us the costs of EU migration partnerships for third countries. Less irregular migration implies a reduction of revenues from **remittances** that many countries of origin depend on. A prime example is Ethiopia where the revenue of remittances is four to five times as high as EU and member state annual disbursements combined. In Somalia, the remittance flow accounts for half of the Gross National Income and 80% of investment. North African countries such as Lebanon, Jordan, Egypt, Morocco, and Tunisia are also highly dependent on remittances (5-16% of GDP)[14]. The development impact of emigration is thus likely to supersede the related risks and losses.

Another potential cost related to EU agreements concerns the local revenues generated by the **smuggling "industry"**. The Chief of Mission of the International Organisation for Migration in Niger described this industry as "the main generator of livelihoods for local communities" and noted that "plans proposed via foreign aid through trust funds and multilateral and bilateral cooperation look like pocket money" in comparison[15].

2.3. The migrants' interests

Migrants seek to attain the EU for different reasons including the quest for greater security, freedom or economic prosperity. A comprehensive overview of the so-called 'push' and 'pull' factors goes beyond the scope of this paper. The question is rather how EU-third country packages or compacts could affect the individual calculus related to irregular migration. The balance between the migrants' costs and benefits depends on the content of EU-third country agreements.

> "IN MANY OF THESE COUNTRIES, MIGRANTS ARE LIKELY TO FACE HUMAN RIGHTS VIOLATIONS."

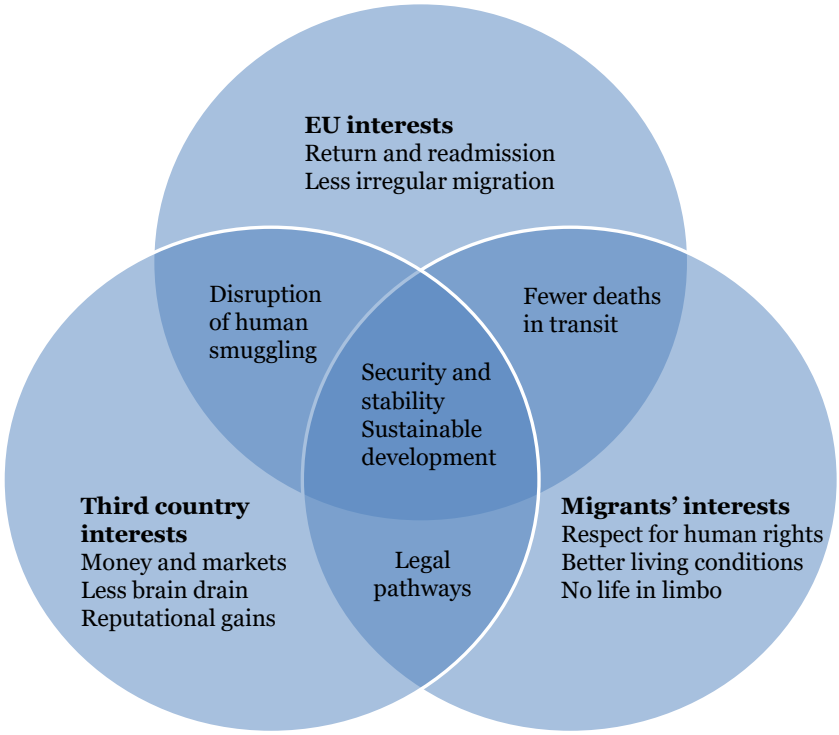
A strong focus on the fight against irregular migration is likely to entail significant costs. It would further restrict the migrants' ability to move in the region and increase the costs related to trafficking and smuggling. Joint efforts to reduce irregular migration could thus **raise the odds of being stranded in a country with important protection gaps**. In many of these

14. World Bank, "Migration and Remittances: Recent Developments and Outlook", World Bank, 2015.
15. Giuseppe Loprete, "MIGRO ERGO SUM – I Migrate, Therefore I Am – Social Pressure as a Driver of Economic Migration from West Africa", London School of Economics Blog, 2016

countries, migrants are likely to face human rights violations stemming from excessive containment measures and deficits in the oversight of border and police forces.

However, EU-third country agreements could also benefit migrants. They could theoretically open up **safe and legal pathways** to Europe through "increased resettlement, humanitarian visa, extended family reunifications, sponsorship programmes and educational scholarships"[16]. Reinforced EU action to address the so-called root causes of migration could **improve the living or reception conditions** in countries of origin and transit. The EU could contribute to enhanced security and promote **human-rights-conform migration management** through capacity-building. The EU could also offer financial and technical support (e.g. vocational training) for the reintegration of returnees in their country of origin.

FIGURE 1 ► **Mapping interests**



Source: Author's compilation

As this schematic overview shows there are some shared interests, namely sustainable development, increased stability and security (see Figure 1). Tackling the "root causes of migration" can be mutually beneficial and the respective actions can easily be incorporated in win-win-win agreements. The other interests become subject to complex multi-level negotiations and trade-offs. A typical example is the EU's offer of visa liberalisation in return for readmission and return agreements. Some EU member state constituencies might oppose visa liberalisation while those of third countries reject EU readmission agreements for the economic reasons outlined above. Constituencies of authoritarian regimes and migrants in limbo tend to have a weak position in this multi-level game.

16. Anna Knoll and Frauke de Weijer, "Understanding African and European Perspectives on Migration - Towards a better partnership for regional migration governance?", ECPDM, No. 203, 2016, p. 15

3. Three telling cases: And the winner is...?

The following zooms in on three cases that have been at the top of the EU's priority list in terms of external migration cooperation: Turkey, Mali and Libya. They stand for different categories of partners: Turkey is an EU candidate and major transit country; Mali is a country of origin and transit and one of the priorities of the Migration Partnership Framework; Libya is among the most challenging and proximate transit countries. Have the EU's crisis-born cooperation arrangements really been of mutual interest?

3.1. Turkey: a lost generation

In 2015, Turkey was hosting over 2.5 million Syrian refugees making it the world's largest refugee-hosting country. It was also the main transit hub for migrants and refugees headed towards the EU. Over 850,000 people arrived on Greek islands by boat from Turkey. The Eastern Mediterranean became a marketplace for traffickers and smugglers and a graveyard for an estimated 805 migrants[17]. After difficult negotiations, initially spearheaded by the German Chancellor, the EU and Turkey agreed on a Joint Action Plan on 29 November 2015 and the EU-Turkey Statement on 18 March 2016, translating into a comprehensive political package of mutual commitments and incentives[18] (see Table 3).

TABLE 3 ► The EU-Turkey "deal" – mapping interests

EU INTERESTS	TURKISH INTERESTS	MIGRANTS' INTERESTS
• 1:1 mechanism: readmission of all migrants have irregularly crossed to the EU after 20 March 2016 • Turkish cooperation in the prevention of irregular migration and the fight against smuggling and organized crime • Ensured migrant registration and issuance of documents in Turkey	• EU technical and financial support for the prevention of irregular migration and migrant reception • Re-energization of EU accession talks • Visa liberalization for Turkish citizens, provided that benchmarks are met • Upgrade of the Customs Union • EU support for creation of humanitarian safe zones in Syria	• 1:1 mechanism: resettlement of one Syrian refugees for each one readmitted by Turkey (up to 54,000) • EU Voluntary Humanitarian Admission Scheme (once irregular crossings have been significantly reduced) • EU financial assistance to improve the situation of Syrians in Turkey (€3bn in 2016-17, another €3bn in 2018) • Adaptation of Turkish legislation on international protection • Access for persons under temporary protection to public services and labour market in Turkey

Source: Based on European Council, 2016

The core of the EU-Turkey agreement is the **1:1 mechanism**, whereby the EU agreed to resettle one Syrian refugee from Turkey for each readmitted from the Greek islands. This mechanism is in line with central EU interests, namely to reduce irregular migration; break the business model of smugglers; and save lives. In fact, the number of arrivals in Greece dropped by 98% between 2015 and 2016 while the number of registered deaths and missing persons in the Aegean Sea decreased by 94% (from 1,100 to 70 persons) [19]. However, migration experts warn not to overestimate the relative "deterrent effect" of the EU-Turkey Statement as it concurred with a prior downward trend in arrivals as well as the closure of the Western Balkans route, coverage of dire reception conditions in Greece, and the restoration of internal EU border checks[20].

17. IOM, "IOM Counts 3,771 Migrant Fatalities in Mediterranean in 2015", 1 May 2016
18. European Council, "EU-Turkey statement", Brussels, 18 March 2016.
19. European Council, "Malta Declaration", Malta, 1 March 2017
20. Thomas Spijkerboer, "Fact Check: Did the EU-Turkey Deal Bring Down the Number of Migrants and of Border Deaths?", Oxford Law Blog, 28 September 2016

In addition, the implementation of the 1:1 mechanism has been dragging. Returns have been outpaced by new arrivals. The slow pace of returns was partly due to the fact that Greek appeal committees rejected attempts to return Syrians, as they were not considered safe in Turkey. Another reason was the backlog in the processing of asylum applications. Despite repeated calls for European asylum experts, shortfalls remained leaving the Greek authorities overwhelmed.

In return for Turkey's cooperation in the fight against irregular migration the EU offered a broad array of incentives. The most tangible one was EU and member state **financial assistance** of up to €6bn in 2016-2018. This was clearly in the interest of the Turkish Government, which had already spent an estimated €7bn on the reception of Syrian refugees by late 2015. Another relatively uncontroversial EU incentive was the commitment to upgrade and extend the Customs Union. An upgrade had already been discussed for several years as both sides felt that the 20-year-old Agreement was outdated.

The EU's offers in the fields of **EU accession and mobility** were less straightforward. An accelerated path towards visa-free travel to the EU is particularly attractive for Turkish citizens. However, both this and EU membership depend on conditions lying outside the EU-Turkey Statement. Accordingly, the EU has repeatedly delayed visa liberalisation, as seven of the 72 benchmarks of the Visa Liberalisation Roadmap have not been met. A particularly critical one is the reform of Turkey's anti-terror laws, which have been misused as an instrument to silence opposition. The situation was complicated further when a failed coup attempt in July 2016 led to a repressive backlash by the Erdogan Government. After the suggestion that Erdogan would reintroduce the death penalty, Austria and a majority in the European Parliament rejected a continuation of accession talks in autumn 2016. Formally the talks continue, but *de facto* they are blocked.

> "TURKEY HAS CLEARLY GAINED POLITICAL LEVERAGE *VIS-À-VIS* THE EU."

Turkey has clearly gained **political leverage** *vis-à-vis* the EU. Erdogan has repeatedly threatened to withdraw from the deal if there is no progress in terms of visa liberalisation or accession. Turkey has also used this threat in bilateral relations and on dossiers unrelated to migration. In March 2017, the Netherlands refused to receive two Turkish ministers campaigning in favour of a controversial referendum on the introduction of a presidential system. Turkey reacted with accusations of fascism and Nazism as well as threats to cancel or downgrade the deal. So far, the EU has not succumbed to such blackmail attempts and the threats have largely been empty. At the same time, member state representatives have been cautious in their dealings with Ankara. It is clear that even a few additional arrivals in Greece could become the straw to break the camel's back.

This leads us to the **reputational costs for the EU**, which are directly linked to the **human costs for migrants**. Several organisations including the UNHCR, the Council of Europe and numerous NGOs criticised the Statement for its negative impact on human rights. The fact that the 1:1 mechanism is limited to persons on the Greek islands led to the transformation of EU hotspots into closed detention centres, in violation of the EU's Reception Condition Directive. As arrivals continued to outpace returns, Greece ended up moving 4,500 people to the mainland. In early 2017, an estimated 15,000 migrants were stranded on the Greek islands in inhumane reception conditions[21].

The EU-Turkey Statement also includes provisions aimed at **improved reception and living conditions** for migrants in Turkey. However, the Turkish asylum system continues to display important flaws. Turkey ratified the 1951 Refugee Convention, but maintains a geographic limitation excluding non-Europeans from full refugee status. Refugees in Turkey still face significant obstacles concerning access to employment, education and healthcare. According to official government statistics, Turkey granted 13,298 work permits to Syrians in 2016[22]. This is a substantial increase compared to the 7,700 permits issued in the five previous years. Yet, the record looks pale considering that up to one million Syrians are estimated to work illegally. Efforts to provide

21. Amnesty International, "Greece: a blue print for despair. Human rights impact of the Eu-Turkey deal", 14 February 2017.
22. Omar Kadkoy, "Syrians and Labor Market Integration – Dynamics in Turkey", The German Marshall Fund of the United States, 2017.

vocational education and training for Syrians were sporadic and, as of January 2017, an estimated 40% of Syrian children in Turkey were not attending school[23].

Though the pace of **resettlement** is much higher than that of return, it remains too slow to represent a tangible alternative to irregular migration. As of March 2017, the number of Syrians resettled from Turkey (3,656). At this pace it would take the EU over 13 years to fulfil its collective promise of resettling 54,000 Syrians and thus roughly 2% of Turkey's Syrian refugee population. As of March 2017, less than half of the EU member states participated in resettlement under the 1:1 mechanism. These facts certainly cast doubt on the effectiveness of the Voluntary Humanitarian Admission Scheme that is yet to be launched.

> "FAILED INTEGRATION IN TURKEY ENTAILS THE LONGER-TERM RISK OF A VERY LARGE LOST GENERATION."

Overall, the record is mixed. The deal is in Turkey's interest as it provides the country with substantial additional funds and political leverage over the EU. However, the EU's promises in the fields of enlargement and mobility have remained empty. The deal is in the EU's interest as it arguably contributes to reducing the number of irregular crossings and deaths in the Mediterranean. However, these gains have to be weighed against important reputational and credibility losses. The most immediate "losers" of the deal are asylum-seekers from Syria and beyond, who are stranded on the Greek islands. The deal seeks to improve the situation for migrants in Turkey, but effects are still limited. The very low probability of being resettled to the EU could push some of them to opt for more dangerous routes. Meanwhile, failed integration in Turkey entails the longer-term risk of a very large lost generation.

The EU-Turkey deal is often portrayed as a model to follow. However, the above analysis points towards four limitations of such transactional migration deals:

1. The EU's comprehensive incentives are often tied to important aims lying outside the realm of migration. It cannot and should not subordinate these to the short-term priority of migration control.

2. Third countries are indeed willing and able to turn the EU's issue linkage strategy around by blackmailing the EU on political dossiers unrelated to migration.

3. The EU makes itself more vulnerable to such blackmail attempts if it fails to provide solidarity internally.

4. Migrants are unlikely to view EU offers of legal pathways as a tangible alternative to irregular migration as long as the member states remain reluctant to participate.

3.2. Mali: nobody wins

Mali is one of the five priority countries of the Migration Partnership Framework. It is among the main origin and transit countries in West Africa. In 2015, there were over 6,500 irregular border crossings of Malians into the EU and the return rate was 11.4%. In 2016, the number of Malian arrivals reached 9,305 while only 119 were returned. With an estimated Malian diaspora of around 200,000 France was particularly keen to prioritise Mali. Since the Islamist offensive on Bamako in early 2013, the country has also been an important focus of EU development assistance and security cooperation. Nonetheless, the situation remains unstable, in particular in the North where armed groups have taken over territorial control and allied with the smuggling industry.

Led by the then Dutch Council Presidency, the EU initiated a High-Level Dialogue on Migration with Mali in early 2016. Framing this dialogue, the EEAS issued a non-paper in February 2016 listing the respective

23. Al Jazeera, "UNICEF: 40% of Syrian children in Turkey not in school", 19 January 2017.

interests24. It identified **shared interests** in development, poverty reduction, security, border control and reducing the loss of lives (see Table 4).

TABLE 4 ► The EU and Mali – mapping interests

EU INTERESTS	MALIAN INTERESTS	MIGRANTS' INTERESTS
• Reduced loss of lives in the Mediterranean • Reduced flow of irregular migrants from Mali • Poverty reduction, peace and regional stability, improved governance and security • Improved border management • Significantly stepped cooperation on readmission • Progress and return (return rate of 11.4% in 2015)	• Reduced loss of lives in the Mediterranean • Continued EU support in security and development aid • Climate financing • Support in border management (e.g. equipment) • Preservation of remittance revenue (around 10% of GDP)	• Reduced loss of lives in the Mediterranean • EU assurances on the preservation of migrants' rights and protection • Legal migration channels and mutual recognition of academic qualifications • Preservation of remittance revenue (around 10% of GDP)

Source: EEAS, 2016

However, the paper also stated that "[v]iews and **interests on migration between the EU and Mali do not coincide**"[25] (emphasis added). The EU's desire to step up cooperation on return and readmission was met with Malian opposition. The country ranked among the world's ten least developed countries in the 2015 Human Development Index[26]. Its economy is highly dependent on remittances (EU estimates range between 7.7%-10% of GDP). Emigration is traditionally considered a success model reflected in the fact that Mali has a dedicated Minister for Malians Abroad. There is thus little to no interest in curbing irregular migration.

So what did the EU have on offer to incite cooperation on return and readmission? The EEAS non-paper referred to **legal migration channels**, but added that this depends on the Member States. It further suggested that **continued development and security support** constituted an incentive and included the option of applying negative conditionality. At the same time, the paper warned that a "less for less" approach could contradict the EU's other aims: "given Mali's low level of income and resilience, in addition to its high vulnerability to external shocks, resources for development cooperation are to be considered essential to preserve the countries development prospects"[27]. The conflict in 2013 and its lasting impact on regional stability illustrated the risks of neglecting Mali's governance and security problems. The only reasonable option was thus to apply "more for more" to development assistance.

In December 2016, the EU and Mali issued a **Joint Communiqué** that media reports described as an "aid-for-migration" deal[28]. The document mentioned nine new EU assistance projects worth €145.1 million targeting youth employment, investment in the Malian diaspora, security, development and resilience. The EU and Mali further agreed to step up cooperation on border management, the fight against human trafficking and, most importantly, return.

The Dutch Foreign Minister who signed the Communiqué in the EU's name declared that it was "the first time that the EU has established such a precise mechanism with an African country with regards to returning failed asylum seekers"[29]. It can be assumed that the Dutch government had an interest in depicting the Communiqué as a deterrent migration deal ahead of difficult elections in March 2017 where it was facing a strong right-wing opponent.

24. European Commission and EEAS, "Joint non-paper on enhancing cooperation on migration, mobility and readmission with Mali", Brussels, 24 February 2016 (leaked by Statewatch).
25. European Commission and EEAS, "Joint non-paper on enhancing cooperation on migration, mobility and readmission with Mali", Brussels, 24 February 2016 (leaked by Statewatch).
26. United Nations Development Programme, "Human Development Report", 2015.
27. European Commission and EEAS, "Joint non-paper on enhancing cooperation on migration, mobility and readmission with Mali", Brussels, 24 February 2016 (leaked by Statewatch).
28. Gabriela Baczynska and Tom Körkemeier, "EU agrees money-for-migration deal with Mali", Reuters, 12 December 2016.
29. Bert Koenders in: Tim Diacono, "EU and Mali sign deal to deport failed asylum seekers", Malta Today, 12 December 2016.

Widely cited in European media, this press declaration sparked protests in Mali. Civil society representatives accused the government of betraying the people by accepting cash in return for a readmission agreement[30]. The amount the EU offered roughly corresponded to one fifth of the country's annual remittance revenue. Mali's foreign minister rapidly declared that these reports came as a "total surprise" for the Head of State and Prime Minister. He underlined that no readmission or return agreement had been signed31.

And indeed, the **Communiqué does not represent a formal agreement**. It refers to cooperation on return based on commonly agreed standard operating procedures. The latter merely aim at facilitating cooperation, but "do not create new legal obligations". Brussels and Bamako subsequently downplayed the matter by speaking of "an agreement with a small A" or "a communiqué on deepening migration partnership"[32]. Two weeks later, the Malian government symbolically sent back two people deported from France on the grounds that their nationality could not be proven.

The EU's migration dialogue with Mali is ongoing and open-ended. But at this stage, it seems that there are no real winners. The Malian case underlines four central challenges for the EU's external cooperation on migration:

1. It illustrates the practical limitations of subordinating development and security aims to migration-related ones.

2. It is exemplary of the conflict of interests between the EU's preference for return and readmission and the revenue of remittances and/or smuggling.

3. It shows that migration-related cooperation is a complex multi-level game with a range of veto players. The EU's ability to open legal pathways is limited by the member states' veto power. The partner countries' willingness to strike 'aid-for-migration' deals is not only restrained by a sense of national independence and pride, but also by the risk of domestic backlash.

4. Finally, the soft law nature of migration communiqués or statements creates legal uncertainty. This fosters misunderstandings within a multi-level game in which the players mainly communicate towards their own constituencies.

3.3. Libya: undisputed losers and diffuse winners

The fact that the Migration Partnership Framework only mentions Libya in passing can be explained by the multitude of challenges this specific "partner" poses. The country has been facing overlapping security and governance crises since the 2011 uprisings, which put an end to the decades-long rule of Gaddafi. Since 2014, rivalling governments and armed militias have been competing for territorial control and power. Terrorists, smugglers and traffickers have used the ensuing vacuum to establish themselves in the country.

In 2016, around 181,000 mostly Sub-Saharan migrants arrived in Europe via the Central Mediterranean route and a sad record of over 5,000 lost their lives in the attempt to do so. Libya was the main gateway accounting for roughly 90% of departures[33]. Italy and Malta have been the most important first destinations.

The EU launched a broad range of measures to prevent the loss of life and disband smuggling and trafficking networks. Among the most visible measures were the FRONTEX operation Triton and the CSDP operation EUNAVFOR Sophia in the Central Southern Mediterranean, off the Libyan coast. Since 2014, these operations

30. Aboubacar Yacouba Barma, "Migration: Le Mali signe avec l'UE sur fonds de rejet de la société civile", *La Tribune Afrique*, 12 December 2016
31. Jens Borchers, "Mali und die EU: Das politische Spiel mit den Abschiebungen", *Deutschlandfunk*, 22 December 2016
32. In: BBC News, "Mali sends back migrants deported to France", 30 December 2016
33. European Commission, "Migration on the Central Mediterranean Route: Managing flows, saving lives", Brussels, 25 January 2017

are estimated to have saved the lives of 200,000 migrants at sea[34]. In mid-2016, the mandate of operation Sophia was extended to include training activities for the Libyan coast guard and navy.

Despite these efforts, the number of arrivals via the Central Mediterranean route rose by 15% between 2015 and 2016. Malta was thus pushing the EU to transfer the logic of the EU-Turkey Statement to Libya. Addressing the European Parliament in January 2017, its Prime Minister Muscat warned that "unless the essence of the Turkey deal is replicated in the central Mediterranean, Europe will face a major migration crisis"[35]. Libyan as well as EU and member state representatives rejected this suggestion arguing that the situation in Libya was far too unstable.

Nevertheless, there was agreement that more had to be done to deter irregular migration and prevent the loss of lives. In January 2017, the Commission published a Communication outlining a comprehensive package of measures targeting flows on the Central Mediterranean route[36]. Soon after, Italy and the UN-backed Libyan government agreed a bilateral memorandum of understanding on cooperation in development and migration. The European Council endorsed the Commission Communication and the Italian memorandum via its Malta Declaration on 3 February 2017[37]. All three documents contain a broad range of measures aimed at reducing irregular migration while improving reception conditions in Libya, and fostering the voluntary return of migrants in transit. Table 5 provides a schematic overview of the respective interests.

TABLE 5 ► The EU and Libya – mapping interests

EU INTERESTS	LIBYAN INTERESTS	MIGRANTS' INTERESTS
• Stabilisation of Libya • Reduced loss of lives in the Mediterranean • Reinforced fight against smugglers and traffickers • Address potential barriers in relation to conditions to be met for return • Avoid diversion of smuggling activities and routes	• EU development and technical assistance • Sustained political backing by the EU • Support and equipment for border management • Creation of alternative livelihoods for Libyan communities living off smuggling industry	• Reduced loss of lives in the Mediterranean • Improved and human-rights-conform reception conditions in Libya • Legal migration channels and resettlement from Libya • Assisted Voluntary Return options

Source: Based on European Commission 2017 & European Council 2017

So what's in it for the Libyan side? First of all, cooperation on migration ensures the EU's **sustained political support** to the Presidency Council headed by Fayez al-Seraj, which is important in light of its disputed position and the country's fragility. The EU also promised to mobilise **additional funds** worth €200 million for migration-related projects in North Africa and earmarked €90 million for Libya. It is still unclear how these funds will be used. The Commission Communication only contains a brief paragraph on promoting alternative livelihoods to replace revenues from the smuggling industry. This point is not trivial as these are estimated at €275-325 million annually and constitute an important source of income for coastal cities[38]. Al-Seraj indicated that the "very humble, very small amounts" the EU offered would not be enough[39]. In March 2017, he requested a long of list of military, rescue and border equipment worth around €800 million. At the time of writing, it was unclear to what extent the Europeans would respond to these requests.

34. European Commission, "Migration on the Central Mediterranean Route: Managing flows, saving lives", Brussels, 25 January 2017
35. In: Jennifer Rankin, "Migration: EU rejects proposals for Turkey style deal with Libya", *The Guardian*, 25 January 2017.
36. European Commission, "Migration on the Central Mediterranean Route: Managing flows, saving lives", Brussels, 25 January 2017
37. European Council, "Malta Declaration", Malta, 1 March 2017.
38. Associated Press, "EU: Libya's cities are making millions from people smuggling", 1 December 2016.
39. In: Gabriela Baczynska and Steve Scherer, "Italy vows to help Libya seal borders, urges EU to do same", Reuters, 2 February 2017.

EU-Libya cooperation on migration remains controversial. Its effectiveness can be questioned, as the UN-backed Libyan government is hardly able to establish full territorial control over its own capital. Furthermore, there is ample evidence that the Libyan authorities violate the migrants' **human rights**[40]. There have been reports of the Libyan coastguard shooting at migrants. If migrants are intercepted in Libya's territorial waters they are unlawfully detained. A leaked report by German diplomats compared the conditions in Libyan detention centres to those in "concentration camps" while witnesses spoke of daily executions "to make room for new arrivals"[41]. IOM and UNHCR only have very limited access to these centres. The EU's focus on the prevention of deaths in the Mediterranean is thus likely to shift these deaths to places where they are not seen.

The Commission Communication vaguely addresses the option of **resettling migrants** from Libya. However, it adds that this "would also require the readiness of member states to participate". The EU's previous record and the fact that resettlement is entirely missing from the Italian memorandum as well as the European Council Declaration cast some doubt on the prospects.

> "THE LOSERS ARE UNDISPUTED WHILE THE WINNERS ARE SOMEWHAT DIFFUSE."

Overall, Libya is a case where the losers are undisputed while the winners are somewhat diffuse. The losers include migrants stuck in Libya as well as Libyan communities that have lived off the revenues of the smuggling industry. Malta and Italy are likely to benefit economically and politically if flows of migrants via the Central Mediterranean route were reduced. However, there is also a risk of the redirection of flows to neighbouring countries, notably Egypt, Tunisia, and Algeria. France has already expressed concern about an increasingly unstable Tunisia while Germany is increasingly worried about very populous Egypt.

The Libyan case is also indicative of the continued **extension of the EU's crisis-based approach** to external migration policy. In this context, the Commission and the European Council mentioned that the EU should work on a redefinition of the criteria to be met for return. One option that was discussed is softening these criteria to allow the designation of "safe places" within potentially unsafe countries. In case of a mass influx, the EU could send migrants to "safe places" in third countries such as Tunisia where their asylum applications would be processed. The idea might be popular among a range of member states. However, it is far less popular in partner countries. Hosting "safe places" would imply taking care of thousands of migrants desperate to reach Europe for longer periods. Migrants are likely to suffer from bad conditions including detention. Aside from potentially violating international law, the EU would have to provide much more substantial financial and mobility-related incentives to change the calculus of neighbouring governments.

4. Lessons and recommendations

The EU's new approach to external migration governance addresses some old weaknesses. The compacts allow the EU to flexibly and rapidly pool a variety of instruments and resources. They also contribute to more vertical coherence. The member states bring more resources to the table and use their special relationships with third countries to the EU's advantage. The examples of Turkey, Mali, and Libya illustrate that incentive packages must indeed be tailor-made in light of the countries' different migration profiles and needs. Nevertheless, some old and new weaknesses remain to be tackled.

40. European Council on Refugees and Exiles, "Report of Libyan Coast Guards attacking migrants raises concerns over continued cooperation within operation Sophia", 4 November 2016.
41. Lizzie Dearden, "EU Malta summit: Leaders warned against stranding thousands of refugees in 'concentration camps' in Libya deal", *Independent*, 3 February 2017.

4.1. Rebalance the comprehensive approach

Comprehensiveness and coherence are among the main promises of the EU's new approach to external migration governance. Although comprehensiveness always sounds good, the tricky question is which overarching goal the EU pursues by repackaging various policies and instruments. In crisis mode, it attempted to subordinate the aims of various tools and policy areas to that of controlling and preventing irregular migration. The Turkish case illustrates the practical limitations of this approach. Indeed, the EU cannot use incentives from the fields of enlargement and mobility as a credible carrot as they continue to be tied to conditions outside migration policy and under the control of multiple veto players. In practice, the EU's main incentive thus remains financial assistance.

The EU linked development aid and migration through the overarching aim of "tackling the root causes of migration". This is where a preventive approach to migration meets longer-term development aims. However, the EU subordinates these longer-term aims to its short-term priorities if it makes development aid conditional on cooperation in migration control. The Malian case shows that this strategy is likely to be counter-productive, in particular if negative conditionality is applied. Its effectiveness is also questionable. After all, countries such as China or Saudi Arabia compete with the EU for influence and access to resources without attaching any political conditionality to their aid.

> "FOCUS ON "MORE FOR MORE" AND REBALANCE THE COMPREHENSIVE APPROACH"

In line with its possibilities and values, the EU should focus on "more for more" and rebalance its comprehensive approach. Rather than subordinating core goals of its external action to migration control, it should establish synergies between the respective policy areas and objectives. One example would be close coordination between the activities of the EU Border Assistance Mission in Libya and the relevant Commission services to ensure that alternative livelihoods are created in communities living off the smuggling industry. Another example is the migration-trade nexus in the Jordanian case. In exchange for easier access to the Single Market through simplified rules of origin, Jordan promised to grant up to 200,000 Syrian refugees access to its labour market. This job creation scheme is backed by significant international grants. This deal could allow Syrians to integrate better in a country close to home, boost Jordan's economy and thereby lower the local population's resentment towards refugees.

4.2. Increase EU funds to change the calculus of third states

The €6bn EU-Turkey deal set a precedent when it comes to the EU's financial incentives. As the Turkish ones in 2015, both Malian and Libyan authorities pointed out that the EU's initial offers were insufficient. Libya demanded eight times more financial assistance while Mali refuses to sign a formal readmission agreement with the EU as the revenue from remittances is higher than the EU's financial offer. These are not the only migration partners that are likely to request more funds in return for their cooperation on migration management.

However, resources are limited. The Commission earmarked only €8 billion for the migration partnerships until 2020. The member states are not always willing to contribute additional funds. They were quick to provide funds for the Turkey Facility but have been much more reluctant in the case of the EU Trust Fund for Africa. As of March 2017, their collective pledges amounted to less than 10% of the €1.7 billion the Commission suggested[42]. The EU's financial "offer" is stretched considering that this Fund covers a total of 23 African countries and should be extended to another three. The EU now seeks to complement this assistance with private investment via the new External Investment Fund. However, it is questionable to what extent third countries will consider the Fund as a tangible incentive. It is still not clear whether the EU will be able to

42. European Commission, "EU Trust Fund for Africa: Pledged contribution EU Member States and other donors", March 2017

leverage the promised €44bn of investment (or €88bn if the member states chip in). It is also uncertain to what extent this investment will benefit regions or countries associated with fragility and insecurity.

"INCREASE THE SHARE OF COMMON FUNDING FOR EXTERNAL MIGRATION GOVERNANCE"

The EU should use the current prioritisation of external migration policy to significantly increase the share of common funding for external migration governance. Today, the EU spends less than 1% of its budget on all migration-related aspects while, for instance, the Common Agricultural Policy accounts for 38%. This stark imbalance can be questioned at a time when polls show that the citizens consider immigration by far the number one challenge facing the EU. Increased common funding would make the EU's external migration policy less dependent on the political will of the member states that is likely to wane now that the crisis is less visible. The EU needs to establish stable instruments to tackle sudden increases in migration pressure in its partners and prevent an exodus to its own shores where possible. Dedicated funding is central if the EU is to act proactively rather than reactively when faced with future crises.

4.3. Address the human rights gap

The EU should reprioritise the human costs of its external migration policy. Deaths and human rights violations linked to migration containment substantially damage the EU's credibility and normative leverage in its neighbourhood. As all three examples reviewed in this paper show, migrants tend to be the main victims of the EU's migration agreements with third countries. The EU should negotiate partnerships as win-win-win arrangements and include migrant's interests and rights in the equation. This would also contribute to tackling the "root causes of migration". After all, human rights violations constitute an important push factor for migrants in countries such as Libya.

"INCLUDE HUMAN RIGHTS IMPACT ASSESSMENTS MORE SYSTEMATICALLY IN PROGRESS REPORTS"

According to the European Commission, the political nature of agreements, such as the EU-Turkey Statement, absolve it from assessing the human rights impact. In the Turkish case, it argued that its progress reports already 'reflected' such an assessment. However, the reports on the implementation of the EU-Turkey Statement as well as those on the Migration Partnership Framework only mention human rights in very general terms. There is a significant oversight gap, especially in light of the considerable sums involved. In line with the January 2017 Decision of the European Ombudsman, the European Commission should include human rights impact assessments more systematically in progress reports and identify mitigating measures[43].

The EU should also redouble its efforts to mainstream human rights considerations in the Common Security and Defence Policy (CSDP). This is important as the number of missions and operations at the intersection of security and migration increases. The human rights impact should be considered at all planning stages and be a priority in the training of EU personnel. Capacity-building efforts targeting border management should comprise a substantial human rights component. The inclusion of UNHCR teams from in the training of the Libyan navy and coastguard under operation EUNAVFOR Sophia is an example to follow.

4.4. Get serious about legal avenues

The EU still fails to deliver when it comes to opening legal avenues. Almost every EU incentive package contains a vague promise to "harness opportunities offered for legal migration channels, ERASMUS opportunities and other policies and tools". Significantly, they add the disclaimer "to be discussed with the member states". The

43. European Ombudsman, "Decision in the joint inquiry into complaints against the European Commission concerning a human rights impact assessment in the context of the EU-Turkey Agreement", 18 January 2017

proposed EU Resettlement Framework could lead to a more streamlined and flexible approach. However, the past suggests that it is rather unlikely that the member states will (a) offer more places, and (b) stick to the foreseen annual resettlement plans.

Making resettlement dependent on the willingness of partners to curb irregular migration would fit the win-win logic hitherto pursued, but is flawed in two respects. First, it is questionable whether partners would see targeted resettlement plans as real incentives given the EU's bad record of implementation. Second, making resettlement a bargaining chip would undermine the humanitarian and needs-based commitment that should guide international resettlement efforts. Vulnerable persons living in countries with uncooperative regimes would once more be the losers of such trade-offs.

"RAISE THE NUMBER OF ANNUAL RESETTLEMENT PLACES TO 20,000"

The primary aim of the new Framework should be to incite the member states to raise their collective contribution to global responsibility sharing. Currently, only around one per cent of the global refugee population is resettled and the EU accounts for less than one tenth of global resettlement efforts. Increasing the EU's share is even more important now that the United States, the world's top resettling country until 2017, is stepping down from its commitments. The member states should live up to the requests of the UNHCR and raise the number of annual resettlement places to 20,000. This would roughly double the existing pledge under the European Resettlement Scheme (22,000 for two years). However, it would still be less than the sole contribution of Canada, amounting to 22,900 resettled persons in 2015.

To ensure member state compliance in bolstered EU resettlement plans, there should be adequate financial incentives. According to the proposed EU Resettlement Framework each member state would receive a lump sum of 10,000 per resettled person from the Asylum Migration and Integration Fund. Under the current financial provisions, this would only correspond to a maximum of 9,700 resettlement places per year[44]. If we follow the recommendation of the UNHCR, the EU funds allocated to resettlement should at least be doubled.

"EU FUNDS ALLOCATED TO RESETTLEMENT SHOULD AT LEAST BE DOUBLED."

In addition, the EU and its member states should use bilateral and multilateral diplomatic channels to influence the Gulf States to play a more important role in global responsibility sharing. These countries have so far refused to participate in international resettlement efforts, but could be incentivised to participate in a preference-matching system since they employ considerable foreign workforce. Several of the EU's migration "partners" would be interested in EU support for the facilitation of legal migration into the Gulf countries. Such schemes could, for instance, provide a viable alternative for Afghans and Eritrean migrants, two of the most significant national groups facing both strong push factors and high migratory costs.

TABLE 6 ► Summary of the main do's and don'ts

DON'T	DO
Subordinate EU foreign, security and development aid policy aims to that of short-term migration control	Rebalance the comprehensive approach and establish mutually beneficial synergies between EU and member state policies and aims
Expect third countries to carry the responsibility for migration management and control without substantial EU support	Increase and pool EU funds for external migration policy to change the calculus of third countries and prevent future 'migration crises'
Turn a blind eye on the human rights impact of bilateral migration arrangements and deprioritise the EU's reputational costs	Introduce systematic human rights impact assessments and strengthen the CSDP's human rights dimension
Fail to deliver on the promise of opening legal avenues and turn resettlement schemes into bargaining chips	Increase EU annual resettlement places to 20,000, ensure compliance through financial incentives from the EU budget, and facilitate legal migration in the region

Source: Author's compilation

44. Amnesty International, "Position paper on the proposed EU Resettlement Framework", 15 December 2016.

CONCLUSION

The EU's external migration partnerships are subject to a complex cost-benefit analysis, particularly if one takes the perspective of migrants into account. Longer-term aims such as sustainable development, security, and stability are largely in everyone's interests. The more disputed elements are shorter-term interests that are often perceived as zero-sum games. These interests become subject to complex trade-offs, in which the migrants' perspective is too often neglected. In this paper, we argued in favour of tailor-made win-win-win arrangements that:

- Link the EU's external action objectives in a more balanced manner
- Offer more tangible incentives and support to third countries
- Reinforce the human rights dimension and include a credible commitment to legal avenues

The analysis has also shown that such agreements can only be one part of the puzzle. The focus on external migration governance should not lead to the neglect of the politically disputed EU-internal dimension of migration governance. The EU and the member states should use the waning crisis mode to address longstanding shortcomings of the Common European Asylum System[45]. Only an effective system of intra-European solidarity and responsibility sharing can make the EU resilient to future migration 'crises' and external blackmail attempts.

45. For a comprehensive reform proposal, see Henrik Enderlein and Nicole Koenig, "Towards Dublin IV: Sharing norms, responsibility and costs", Jacques Delors Institut Berlin, Policy Paper No. 169.

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JACQUES DELORS INSTITUTE
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Pariser Platz 6, D – 10117 Berlin
19 rue de Milan, F – 75009 Paris
office@delorsinstitut.de
www.delorsinstitut.de