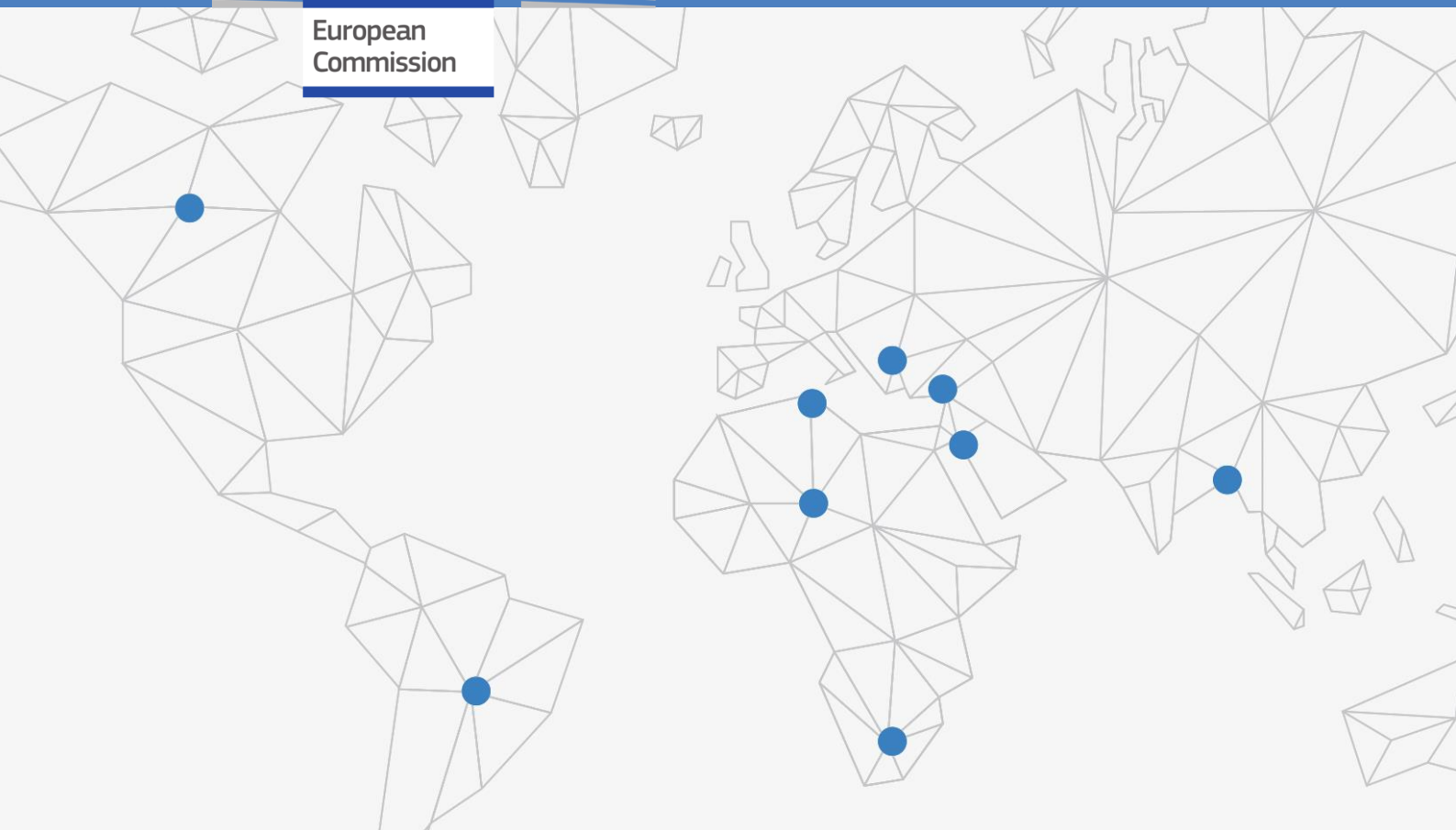


EUROPEAN POLICYBRIEF



European
Commission



ASILE

Global Asylum
Governance and
the European
Union's Role

Addressing Protection Implications of EU Extra-Territorial Migration Cooperation: Policy recommendations

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ABOUT ASILE PROJECT

The ASILE project studies the interactions between emerging international protection systems and the United Nations Global Compact for Refugees (UN GCR), with particular focus on the European Union's role. Adopting an interdisciplinary perspective, it examines the characteristics of international and country-specific asylum governance instruments and arrangements, and their compatibility with international and regional human rights and refugee laws. A key objective of the project is to provide the cutting edge of academic knowledge, promising practices and a collection of evidence-based tools for the development of future asylum policies.

ASILE represents an advance in comparison to the current state of the art. It seeks to facilitate a ground-breaking understanding of the role and impacts of legal and policy responses - instruments and arrangements - on refugee protection and sharing of responsibility from the perspective of their effectiveness, fairness and consistency with international and regional legal and human rights and refugee law standards. It will do so through an interdisciplinary examination and mapping of UN GCR actors and key policy and legal instruments on mobility and containment, and the impacts of vulnerability and status recognition assessments over individuals in search of international protection.

1. Introduction

As a major global actor, the EU and its member states have a pivotal role to play in contributing to addressing the global challenge of forced displacement. They are significant contributors when it comes to supporting refugee hosting states in coping with the task of hosting large populations of refugees and displaced persons through financial and technical assistance including investing in strengthening asylum capacity and supporting self-reliance of refugee populations – all well in line with the commitments of the [Global Compact on Refugees](#) (GCR).

At the same time measures and policies that contravene efforts for global responsibility sharing and undermine solidarity with countries and regions hosting the majority of the World's refugees continue to dominate the EU approach to asylum and migration.

There is no alternative to global solidarity and responsibility sharing

With the continued increase in global displacement and a widening gap in terms of new displacement and the achievement of durable solutions, calls for "out of the box-thinking" and proposals for innovative solutions to the management of displacement are frequent and recurrent.

There is indeed a need to invest in and contribute to solutions to the achievement of *better protection and more dignified lives* for the growing numbers of displaced populations. However, the different schemes, arrangements, and solutions pursued by some high-income states, such as the [Danish](#) and [British](#) that seek to externalise asylum processing to a third country, the [recent move by the U.S. government that restricts access to the asylum system at the U.S.-Mexico border](#) and also efforts by the EU and Member States to stem movements towards Europe through third country arrangements, are driven by more or less explicit objectives of *reducing responsibility for refugee protection through responsibility shifting* and characterized by attempts to contain and deter refugee movements.

Low- and middle-income countries are currently [hosting 76%](#) of the world's refugees and other people in need of international protection. There is an evident need for more equitable global responsibility sharing. When responsibility-sharing fails, and a few countries carry the responsibility alone, displaced people are not protected as they need and are entitled to be. Efforts by states to shift responsibility to other countries, contribute to further tipping that balance.

Since 2015, Europe has intensified its cooperation with third countries in the field of asylum and migration. Reliance on third countries for the control and management of 'irregular migration', and the prevention of onward movements of refugee populations, is one of the key priorities of the [EU Pact on Migration and Asylum](#) – a package of legislative files put forward by the EU Commission in September 2020.

The controversial [EU-Tunisia Memorandum of Understanding](#) (MoU) launched in July 2023 is one of the most recent examples of EU-third country partnerships driven by clear objectives of reducing arrivals to Europe and increasing returns. This follows on from a consistent focus

on third country cooperation including at the [Special European Council in February 2023](#) calling for launch of EU action plans for the Atlantic, Western and Eastern Mediterranean routes, and urgent implementation of the existing action plans for the Western Balkans and Central Mediterranean routes, as well as at the [Justice and Home Affairs Council on 8 June 2023](#) where among other things measures to expand the use of safe third country transfers took centre stage.

There are – and legitimately so – multiple objectives of EU-Third country cooperation, but the ultimate goal of cooperation on asylum must be to enhance the protective environment and protection of displaced people and to support the achievement of durable solutions. The EU's credibility as a principled humanitarian and development actor is undermined – in the eyes of third country partner countries - by the predominant objective of deterring and preventing refugees from reaching EU territory. And it is compromised by policies that exploit power asymmetries and apply conditionalities on financial support to transfer protection responsibility for asylum seekers and refugees to third countries.

Expanded use of the Safe Third Country concept: The protection elsewhere approach

The [Justice and Home Affairs Council meeting on 8 June 2023](#) reached agreement on two key asylum and migration files – the Regulation on Asylum and Migration Management (RAMM) and the Asylum Procedures Regulation (APR), which will now be negotiated with the European Parliament. Particularly the APR encourages EU Member States to expand the use of the safe third country concept with the view to decrease pressure on the asylum systems in EU member states, and to disincentivize arrivals.

The safe third country concept implies that if an applicant for international protection could have obtained it in another country to which the person has sufficient connections, the receiving State is entitled to reject responsibility for the protection claim. The safe third country concept is applied as a basis for declaring an application inadmissible and thus barring applicants from a full examination of the merits of their claim and creating ground for deportation.

A country needs to meet certain protection criteria in line with the Refugee Convention and there needs to be a connection between the person and the country, as per international law. The recent agreed position by the Council on the proposed Asylum Procedures Regulation promotes expanded use of admissibility assessments and leaves significant discretion to Member States to decide on which countries meet the connection criteria, and hereby entailing a potentially much broader application of the concept.

The transfer to safe third countries meeting the protection and connection criteria is not as such at odds with the 1951 Convention and its 1967 Protocol. The expanded provision for the use of the safe third country concept and admissibility screening will however limit access to asylum in the EU and increase the risk of deportation to third states that are not able to ensure effective protection. In addition, it will further contribute to undermining international cooperation on asylum and efforts towards more equitable responsibility sharing and hereby contravene the commitments under the Global Compact on Refugees (GCR).

Increasing evidence - well summarized in the recent ASILE policy brief 'Shortcomings in the Externalization of EU Asylum Cooperation'ⁱ - point to fundamental challenges characterizing the EU's external asylum and migration policy across different country contexts. These include ineffectiveness, harmful human rights implications and negative impacts on democracy and the rule of law, which run counter to the EU Treaties obligationsⁱⁱ to ensure consistency between its external actions and its founding principles, including the rule of law and human rights. This must prompt reflection and change to the direction of future action.

2. Policy Priorities and Recommendations

Building on research findings under the ASILE project as well as operational insights and protection data of civil society and human rights actors, we call on the **EU, its decision-making institutions, and its Member States** to listen to the loud evidence and take genuine steps towards a more protection sensitive and rights-based migration cooperation with third countries with an emphasis on the following five policy priorities and recommendations:

1. Place the protection of people affected by displacement at the centre of any EU-Third country cooperation on asylum and migration.
2. Expand protection and assistance for refugees and migrants through partnerships and policy dialogue with third countries without conditionalities on restricting mobility.
3. Apply a conflict-sensitive and rights-based approach to all EU supported actions related to forced displacement and migration.
4. Monitor, document, and evaluate effects of extraterritorial migration cooperation with the view to improve policy responses and address adverse protection implications.
5. Increase accountability for violations of international law in third states as result of the EU's extraterritorial migration cooperation and direct engagement.

1. Place the protection of people affected by displacement at the centre of any EU-Third country cooperation on asylum and migration

- **Reverse policies of securitization of people seeking safety and uphold the right to seek asylum.** Objectives of the EU and Member States to restrict mobility and reduce arrivals at the EU's external borders must never be at the expense of the ability of refugees and asylum seekers to seek safety. The increasingly securitized approach to migration and border management that restricts access and strengthens border controls pushes refugees, asylum seekers and migrants into invisibility and exacerbates protection risks for people on the moveⁱⁱⁱ. All policies

and practices, including related to securing borders must comply with human rights law, the rule of law^{iv} and the principle of *non-refoulement*.

- **Increase safe and regular pathways for protection and labour migration.** In line with commitments in the Global Compacts on refugees and migration, resettlement, and complementary pathways for protection, including easier access to family reunification must be expanded. Further, pathways for labour mobility and education opportunities must be developed and promoted in line with the European labour market's needs.
- **Ensure respect for human rights and adherence to the “do no harm” principle in the EU’s policy engagement with third countries on asylum and migration.** EU supported actions aimed at addressing forced displacement, asylum and migration should be carefully designed so they do not negatively impact the rights, safety and dignity of refugees and migrants. Actions cannot be seen – and should not be evaluated - in isolation but must consider the broader implications, ensure full respect for human rights, and fully adhere to the “do no harm” principle to avoid counterproductive outcomes of migration cooperation on protection of forcibly displaced persons and migrants, including broader impacts on e.g., regional mobility and trade.

2. Expand protection and assistance for refugees and migrants through partnerships and policy dialogue with third countries without conditionalities on restricting mobility

- **Amplify and support efforts by local and national authorities as well as of national and international civil society organisations operating in host and transit countries to improve access to protection, assistance and services for refugees and migrants,** including related to access to psycho-social services, medical care, and safe housing^v. People with irregular status often prefer to remain invisible and are hesitant to seek assistance and engaging with formal institutions for fear of interception, detention, and deportation. Efforts to build trust between the affected population, local authorities and service providers through community-based approaches are needed to expand access to protection, assistance, and services for refugees and migrants in precarious situations. In addition, engaging with host communities to promote inclusion and counter discriminatory practices and xenophobia are crucial to improve safety, protection, and dignity for those in need.
- **Support the improvement of the protection environment in host and transit countries, including expanding refugee protection and countering the criminalisation of mobility.** Efforts to improve and expand national legal frameworks in host and transit countries to better protect the rights of migrants

and refugees must be central to the dialogue between the EU and relevant authorities in partner countries on forced displacement and migration. This includes recognizing and addressing the role of third countries targeted by the EU for migration partnerships in hosting and protecting refugee populations. It also implies mitigating the heightened protection risks resulting from the increasing criminalisation of irregular movements in national legal frameworks and countering the integration of such criminalisation in national legislation.

- **Structure and embed any short-term objectives of migration and asylum interventions within longer-term aims that support good governance.** EU supported migration and asylum related actions – whether humanitarian, stabilisation or institution strengthening – must be structured within a longer-term development agenda, which recognises the connection between human rights, protection, governance, and migration management. Migration and asylum interventions should strengthen governance, including rule of law and democratic institutions, with a particular emphasis on achieving tangible impacts that can improve the lives of host communities as well as refugees and migrants.

3. Apply a conflict-sensitive approach to all EU supported actions related to forced displacement and migration

- **Ensure that all EU supported actions related to forced displacement and migration are guided by a strong human rights and do-no-harm approach.** A strong human rights approach should guide intervention to ensure that the delivery of aid is conditional on the expansion of the protection space and that no support is given to entities responsible for human rights abuses, in accordance with a due diligence policy. The collaboration with and the provision of assistance to migration management institutions by the EU and Member States in third countries needs to be conducted carefully to ensure that it effectively provides protection and assistance to migrants and refugees in need without inadvertently causing harm.
- **Commit to thorough conflict analysis to avoid exacerbating conflict.** A conflict-sensitive approach recognises that providing aid into conflict settings will always influence the context. There must be a commitment among those responsible for funding, designing, and implementing migration related interventions including responsible EU institutions to understand the context and its conflict dynamics and to take genuine steps to minimise harm. A thorough analysis of local political, security and economic dynamics should ensure that migration-related interventions do not exacerbate conflict dynamics by providing legitimacy and resources to some state- and non-state actors over others.

4. Monitor, document, and evaluate effects of extraterritorial migration cooperation with the view to improve policy responses and address adverse protection implications

- **Establish and maintain effective independent monitoring of the protection implications of extraterritorial migration and asylum cooperation** in line with the [Better Regulation guidelines](#). With the pace and scale of roll-out and implementation of migration partnerships with third countries, it is imperative that the EU and Member States assesses the impact of its actions through systematic monitoring and evaluation to increase learning and improve responses. The integration of human rights monitoring and oversight in external migration cooperation with third countries with a view to improving the safety and dignity of those affected by the policies must be prioritized and strengthened. This should include a clear operationalisation of human rights objectives in project documents; an ex ante human rights audit; and of ex post monitoring and evaluation reports^{vi}.
- **Establish and ensure systematic involvement and inclusion of civil society and of those affected by policy responses.** Consultations should be consistent and transparent^{vii} and aim to help qualify and validate approaches; and to ensure that potential negative impact of EU supported interventions is considered and mitigated. Involvement and inclusion of those affected by policy responses should include and account for population groups at heightened risk due to age, gender, and other diversity factors.
- **Prioritize and allow for timely integration of evidence in policy responses and programme designs.** Timely integration of evidence must be ensured to inform EU policy responses and actions, including related to avoid adverse human rights effects of interventions and counterproductive outcomes in the terms of the expansion of protective environments and the protection of refugees and migrants in countries targeted by migration partnerships.

5. Increase accountability for violations of international and European law in third countries as result of the EU's extraterritorial migration cooperation and direct engagement

- **Support and accelerate efforts by local and national authorities as well as of national and international civil society organisations operating in partner countries to raise awareness of rights of refugees and migrants and the provision of legal aid.** Awareness raising and information on rights, including the right to seek asylum and the right to effective remedy for individuals whose human rights have been violated is a precondition for increasing accountability for violations of international law and should be supported in program interventions. In addition, legal

aid services targeting refugees and migrants with the purpose of assisting people in claiming and obtaining their rights must be available.

- **Increase and enable transparency and democratic control of the EU's engagement in third countries on forced displacement and migration**, including enabling scrutiny by the European Parliament of spending related to forced displacement and migration across all EU funding instruments^{viii}, ensuring public availability of monitoring and evaluation reports, and parliamentary control of the engagement of EU agencies – such as Frontex and the EU Asylum Agency - outside the EU's territory. This includes ensuring effective and accessible complaint mechanisms and pathways to justice.
- **Acknowledge and consider evidence of human rights implications in a comprehensive and transparent manner and take adequate corrective action.** Evidence of the human rights effects of extraterritorial migration cooperation offered by actors directly engaged with refugees, migrants and host communities in the countries targeted by migration partnerships must be acknowledged, and timely and appropriate corrective action taken in program and policy interventions by the EU and Member States.

3. Acknowledgements

This Policy Brief is partly derived from the ASILE Project Virtual Roundtable "*Addressing protection implications of the EU's extraterritorial migration cooperation*" co-organized by the [ASILE Civil Society Group \(CSG\)](#) on May 31, 2023. The roundtable was informed by ASILE [research findings on the fundamental challenges of the EU's extraterritorial asylum and migration policy](#) and [principles of responsibility attribution](#) in complex multi-actor migration and asylum management contexts, which were presented by researchers. The analysis and recommendations herein are inspired by our speakers including:

Federica Toscano, *Save the Children*

Chloe Marshall-Denton, *Médecins Sans Frontières (MSF)*

Josephine Liebl, *European Council on Refugees and Exiles (ECRE)*

Victor Flores, *Derechos Humanos Integrales en Acción (DHIA) and International Refugee Assistance Project (IRAP)*

ASILE researchers:

Sergio Carrera, *Centre for European Policy Studies (CEPS)*

Meltem İneli Ciğer, *Suleyman Demirel University, Faculty of Law*

Julia Kienast, *Aarhus University*

In addition, the recommendations have been circulated to a broader group of relevant civil society and human rights actors including participants of the roundtable^{ix}, and further informed by an exchange taking place at a Task Force meeting between the ASILE consortium and representatives from the EU institutions in Brussels organized in June 2023.

ⁱ Bachirou Ayoub Tinni, Olga Djurovic and Rados Djurovic, Abdoulaye Hamadou, Meltem Ineli-Ciger, Gamze Ovacık, Fatma Raach, Hiba Sha'ath, Thomas Spijkerboer and Orçun Ulusoy (2023) Shortcomings in the Externalization of EU Asylum Cooperation: Lessons from Niger, Serbia, Tunisia and Türkiye.

ⁱⁱ EU Treaties obligation under Article 21 TFEU

ⁱⁱⁱ Marshall-Denton, Chloe and Panico, Andrea (2023): Serbia: a changing landscape of securitisation with health and humanitarian consequences; See also DRC & MMC (2021): Countering Human Smuggling: No silver bullet for safer mobility <https://pro.drc.ngo/resources/news/countering-human-smuggling-no-silver-bullet-for-safer-mobility/>

^{iv} See also commitments of the UN Global Compact on Migration including Guiding Principle (d) *Rule of law and due process*, and Objective 10 on border management: https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_73_195.pdf

^v See supporting analysis in e.g., Save the Children International (2023) Girls on the move in North Africa: <https://resourcecentre.savethechildren.net/document/girls-on-the-move-in-north-africa/> & (2022): Wherever we go, Someone does us Harm: Violence against refugee and migrant children arriving in Europe through the Balkans: <https://resourcecentre.savethechildren.net/document/wherever-we-go-someone-does-us-harm-violence-against-refugee-and-migrant-children-arriving-in-europe-through-the-balkans/>

^{vi} See supporting analysis in the Collective Publication by Bachirou Ayoub Tinni; Olga Djurovic; Rados Djurovic; Abdoulaye Hamadou; Meltem Ineli-Ciger; Gamze Ovacık; Fatma Raach; Hiba Sha'ath; Thomas Spijkerboer; Orçun Ulusoy (March 2023): [Asylum for Containment. EU arrangements with Niger, Serbia, Tunisia and Turkey.](#)

^{vii} See supporting analysis in the Collective Publication by Bachirou Ayoub Tinni; Olga Djurovic; Rados Djurovic; Abdoulaye Hamadou; Meltem Ineli-Ciger; Gamze Ovacık; Fatma Raach; Hiba Sha'ath; Thomas Spijkerboer; Orçun Ulusoy (March 2023): [Asylum for Containment. EU arrangements with Niger, Serbia, Tunisia and Turkey.](#)

^{viii} See supporting analysis and elaborate recommendations in e.g., ECRE & UNHCR (2022): Follow the Money IV – The use of AMIF and ISF-BV funds outside the EU: <https://ecre.org/ecre-unhcr-report-follow-the-money-iv-the-use-of-amif-and-isf-bv-funds-outside-the-eu/>; WOOLLARD Catherine, LIEBL Josephine, DAVIS Laura, CASAJUANA Estela (2022): EU migration and asylum funds for third countries: [https://www.europarl.europa.eu/RegData/etudes/STUD/2022/737870/IPOL_STU\(2022\)737870_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2022/737870/IPOL_STU(2022)737870_EN.pdf)

^{ix} The broader group of civil society and human rights include Refugee Women's Network, EuroMed Rights, ASGI, Alarm Phone Sahara, Mixed Migration Centre (MMC), Danish Refugee Council (DRC). The recommendations have been drafted by the Danish Refugee Council in their capacity as chair of the ASILE Civil Society Group (CSG).