CM2506

MEIJERS COMMITTEE COMMENT ON THIRD COUNTRY MIGRATION AGREEMENTS

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In this comment, the Meijers Committee provides a critical assessment of the EU's Increasing reliance on migration agreements with third countries. While these deals are often framed as mutually beneficial tools to manage migration, the Committee expresses deep concern over their legal ambiguity, lack of transparency, and serious implications for human rights and the rule of law.

This comment identifies four types of deals—Transfer Agreements based on the "safe third country" concept, Financial Support Agreements, externalised asylum procedures, and Return Hubs—and highlights common issues including blurred accountability, limited access to justice, and potential breaches of non-refoulement obligations.

The Meijers Committee warns that such informal, non-binding agreements undermine EU values by facilitating cooperation with regimes known for human rights abuses, and by limiting affected individuals' access to justice.

To address these concerns, in its recommendations, the Committee calls for legally binding agreements with inter alia explicit human rights clauses, democratic oversight involving the European and national parliaments, ex-ante rights impact assessments, and robust judicial review mechanisms.

Meijers Committee

Standing committee of experts on international immigration, refugee and criminal law

Meijers Committee

CM2506 Meijers Committee comment on Third Country Migration Agreements

The European Union and its Member States seek to forge comprehensive 'deals' with third countries, offering political packages that include specific objectives and mutual commitments. Formally, these agreements are designed to create mutually beneficial outcomes for all parties by integrating various policy areas including migration as well as trade and development. Regarding migration, they often aim to improve external border controls and even the burden sharing between countries. Additionally, these agreements are claimed to address issues throughout the migration process, such as structural deficiencies in third countries along common migration routes. This goal is presented as an attempt to mitigate migration flows coming to the EU and instead make transit or third countries more appealing destinations.

However, these deals are far from straightforward. They vary significantly in their structure, the degree of EU or Member State involvement, and the strategies the contracting parties employ. This differentiation may raise questions over their real impact and the accountability mechanisms available for individuals affected. A first concern is the lack of transparency in how these agreements are negotiated. Behind closed doors and driven by rapidly changing circumstances, negotiations often take place with little public scrutiny, and key strategies—ranging from migration control measures to development assistance—are often established outside formal agreements. Furthermore, European police, immigration services, and even EU agencies have been collaborating with third countries and third country organizations linked to torture, disappearances, and human rights abuses in the effort to curb migration. As such, the fundamental rights implications of these deals are alarming. Lastly, the vague and often informal division of tasks makes it difficult to define responsibility within these agreements, resulting in obscured lines of accountability for individual states in cases of human right violations.

In this commentary, the Meijers Committee examines the different types of agreements that the EU concludes with third countries with a twofold aim. Firstly, the commentary strives to debunk myths surrounding these deals and to clearly identify their similarities and differences through the creation of a typology. Clear categories will help distinguish the diverse mechanisms or actors involved, as well as the variety of strategies employed, ultimately leading to impact assessments that better identify best practices and points of improvement.

Secondly, this commentary offers a critical reflection on these deals, analyzing their problematic aspects and harmful effects. Hence, the risks these deals pose to human rights and their long-term consequences of undermining EU values in the pursuit of short-term migration control will be examined.

Finally, the Meijers Committee formulates recommendations for stakeholders that can better the EU's and Member States' practices when concluding such deals, including transparency, accountability and adherence to international law and EU values.

Typology

There are several types of arrangements the EU or individual Member States have concluded with third countries ultimately striving to manage migration flows. These arrangements often differ according to the extent of the EU or Member State own involvement and also may vary with regard to the specific part of the migration and asylum process they target. The distinction between EU-led and Member State-led migration deals can influence negotiating power, as well as impact and accountability of the actors involved. Nevertheless, their format is often similar and inspiration can be drawn from one deal to another. For example, European Commission President Ursula von der Leyen highlighted the Italy-Albania deal as a potential learning

opportunity for the EU, emphasizing its practical relevance.[1] Hence, both EU- and Member State-led deals fall within the scope of this comment.

This practice of concluding migration arrangements, particularly outside standard political and judicial frameworks, is not new. Rather, it reflects a longstanding pattern in EU migration policy. Early intra-EU cooperation was largely informal and intergovernmental before evolving into a more structured "Europeanisation".[2] This trend is especially evident in readmission policy, where informal approaches were well-established even before the 2015 migration crisis.[3]

Against this backdrop, four types of deals have been distinguished for the purpose of this comment: (1) Transfer Agreements based on the safe third country concept; (2) Financial and structural support Agreements; (3) Agreements externalising asylum procedures; and (4) Return hubs.

Transfer Agreements based on the safe third country concept

During the increased 2015-2016 migration inflows,[4] the EU began forming agreements with third countries based on the "safe third country" concept, allowing Member States to reject asylum applications as "inadmissible", without examining the merits of the claims.[5] This permits the return of asylum seekers to countries deemed capable of providing fair asylum procedures and protection from harm or *refoulement*. The recently adopted Asylum Procedures Regulation defines a safe third country as one where non-nationals face no threats due to *inter alia* their race, religion and political opinion or risks of torture and receive protection against refoulment under international law.[6] Closely related is the "first country of asylum" concept, enabling the return of individuals to countries where they are already recognized as refugees or receive international protection.[7]

Agreements based on the "safe third country" concept often shift asylum responsibilities to third countries by transferring asylum seekers there for processing. Such deals are made on the basis of reciprocity and establish a rapid and effective procedure for the identification and return of persons who do not fulfil the conditions for entry to the EU Member States. If the claims of these transferred asylum seekers are accepted by the third country, they typically remain in that country, which often receives financial aid to manage the reception and integration of asylum seekers. These deals relieve the sending EU Member State of responsibility for asylum processes and standards, placing the burden on the receiving state. Such arrangements also aim to deter illegal entries by signaling that asylum seekers will not stay in the destination country but will instead be transferred elsewhere.

The 2016 EU-Turkey Statement exemplifies this approach. Under the agreement, asylum seekers arriving on Greek islands were returned to Turkey, a designated "safe third country," thereby preventing access to EU asylum processes.[8] In return, the EU committed to funding, visa-free

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[1] See Ursula von der Leyen, Migration letter European Commission October 2024 https://open.overheid.nl/documenten/7699383a-441f-4b22-b42f-84d9b979d48e/file

[2] Eleonora Frasca, and Emanuela Roman. "The Informalisation of EU Readmission Policy: Eclipsing Human Rights Protection Under the Shadow of Informality and Conditionality." *European Papers-A Journal on Law and Integration* 2023.2 (2023), p.933.

[3] Ibid.

[4] See https://www.consilium.europa.eu/en/policies/eu-migration-policy/migration-timeline/

[5] Regulation (EU) 2024/1348, Asylum Procedure Regulation, Article 38

[6] Ibid., Article 59 (1)(a)

[7] Ibid., Article 58.

[8] See Carrera Nunez, Sergio, et al. "Global Asylum Governance and the European Union's Role: Rights and Responsibility in the Implementation of the United Nations Global Compact on Refugees." (2025), p.38. https://library.oapen.org/handle/20.500.12657/94589

travel for Turkish citizens, and renewed accession talks.[9] Another example is that of Serbia, which as a key transit country on the Balkan route, has also been part of EU agreements since 2015.[10] While these included funding and operational support like training by the European Union Agency for Asylum (EUAA) and European Border and Coast Guard Agency (Frontex) assistance,[11] Serbia's designation as a safe third country by Hungary[12] has allowed returns under similar principles as the EU-Turkey deal.

Moreover, some agreements go beyond countries with which asylum seekers have prior connection or passage. The UK-Rwanda deal, though not EU-related, illustrates this. Under the agreement, the UK planned to relocate asylum seekers to Rwanda for processing and resettlement, with Rwanda receiving significant financial support.[13] Unlike EU deals, this arrangement lacked a transit connection for asylum seekers, raising legal and ethical concerns about its fairness. To further explain, the UK-Rwanda agreement is not based on the idea that individuals first passed through a transit safe third country and had the opportunity to apply for asylum there, as was the case with Turkey and Serbia. This is a very important difference, as in the case of both transit countries, a connection existed for the individuals applying for protection. In contrast, there is no such connection between individuals applying for asylum in the UK and Rwanda, where they would ultimately be sent, further problematizing these kinds of deals.

Financial and structural support Agreements

Another common type of agreement is that under which the EU provides financial, material and operational support to the third country. These agreements aim to strengthen the management capacity of the third country and ultimately prevent irregular departures toward the EU.[14] Under these deals, the EU funds the third country's border management, its operations tackling smuggling and human trafficking as well as its migration and asylum system. Further, these deals can include economic support intended for the betterment of the reception and living conditions of the refugee populations, such as increased reception capacities, especially for vulnerable populations. These agreements often also provide for the training of national authorities and officials and the provision of technical support and equipment, in some cases involving EU Agencies, such as Frontex and the EUAA. Overall, the financial support provided can take the form of aid, grants, and loans and also may seek to enhance cooperation between the EU and the third country in different sectors, such as renewable energy and trade or other development-related fields.

An agreement that falls under this category is that between the EU and Tunisia, signed in the form of a memorandum of understanding (MoU) in July 2023.[15] This deal focusses on combating irregular migration and improving Tunisia's border management, with €105 million allocated for training, anti-smuggling, and border control. On 22 September 2023, the EU announced

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[9] See EU-Turkey Statement and Action Plan 2016 https://www.europarl.europa.eu/legislative-train/theme-towards-a-new-policy-on-migration/file-eu-turkey-statement-action-plan

[10] See supra note 7, p.39.

[11] See for instance EC Press Release https://ec.europa.eu/commission/presscorner/detail/en/ip_24_3422 ; See also our relevant comment on Frontex's status agreements with Senegal and Mauritania https://www.commissie-meijers.nl/wp-content/uploads/2023/06/CM2307.pdf

[12] See also https://www.bbc.com/news/world-europe-34261357

[13] UK-Rwanda Agreement 2023 https://assets.publishing.service.gov.uk/media/65705fd4746930000d4888dc/CS_Rwanda_1.2023_UK_Rwanda_Agreement_Asylum_Partnership_Protection_Refugees_Migrants.pdf

[14] See supra note 7, p.47.

[15] See https://ec.europa.eu/commission/presscorner/detail/en/ip_23_3887

additional operational support of €60 million and a €67 million migration package.[16] However, Tunisian President Kais Saied rejected this funding on 3 October 2023, calling it insufficient and inconsistent with the agreement.[17] After the deal was struck the European Commission President praised the MoU as a "blueprint" for future deals.[18] Nevertheless, the deal's status remains uncertain and concerns remain with regard to the upholding of human rights protections under the scheme when applied.

The EU-Egypt joint declaration of March 2024 is another third country deal falling under this category, including financial and structural support.[19] This agreement is crucial for the EU's external relations considering the country's strategic importance, underscored by its geographical proximity to the Gaza war and the conflict in Sudan. The agreement aims to curb migration with €7.4 billion in aid until 2027, including loans, investments, and grants.[20] It also promotes cooperation in renewable energy, trade, and investment.[21]

The EU-Lebanon agreement is another financial and structural support type of deal, announced on May 2024.[22] The deal provides a €1 billion aid package to curb migration to Europe, particularly due to the rise of Syrian refugees making their way to Cyprus.[23] Around €736 million to support Lebanon's refugee care, while the remainder is meant to improve border control. The agreement also promotes repatriation efforts to Syria's "safe zones" for refugee return.

Agreements externalizing asylum procedures

Another type of deal relates to arrangements partly externalizing asylum procedures. In contrast with transfer agreements, these do not envisage the transfer of responsibility to the third country, nor does it require the third country to determine someone's eligibility for international protection. Rather, these deals include arrangements relating to the detention of asylum seekers in the third country, pending their processing or decision, and provide for technical cooperation between the parties. Importantly, while applications are processed in the territory of the third country, the decision-making of applications is entirely concluded by the Member State, which retains control over the granting or refusing of status to these individuals and thus is also accountable for the treatment they are subjected to. These agreements are also made in an attempt to better manage the EU's external borders and prevent migrant and refugee arrivals.

An example is the Italy-Albania agreement signed in November 2023, aiming to manage migrants and asylum seekers by constructing two reception centers in Albania, with capacity to hold up to 3,000 people for a month.[24] Under the five-year agreement, Albania will accommodate up to 36,000 migrants annually while Italy processes asylum claims.[25] Migrants rescued by Italy or

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[16] See https://ec.europa.eu/commission/presscorner/detail/e%20n/mex_23_4585

[17] See: https://thearabweekly.com/tunisia-rejects-eu-financial-aid-without-respect-raising-questions-about-deal-europe

[18] See https://www.politico.eu/article/eu-tunisia-deal-blueprint-to-curb-migration-north-africa/

[19] See https://neighbourhood-enlargement.ec.europa.eu/news/joint-declaration-strategic-and-comprehensive-partnership-between-arab-republic-egypt-and-european-2024-03-17_en

[20] See: https://www.reuters.com/world/eu-bolster-egypt-ties-with-billions-funding-2024-03-17/

[21] See: https://www.euractiv.com/section/politics/news/eu-agrees-to-controversial-e7-4bn-migration-deal-with-egypt/

[22] See: https://neighbourhood-enlargement.ec.europa.eu/news/president-von-der-leyen-reaffirms-eus-strong-support-lebanon-and-its-people-and-announces-eu1-2024-05-02_en

[23] See: https://www.dw.com/en/eu-funnels-aid-to-lebanon-amid-syria-migrant-surge-to-cyprus/a-68975405

[24] See Translated Protocol between Italy and Albania https://odysseus-network.eu/wp-content/uploads/2023/11/Protocol-between-the-Government-of-the-Italian-Republic-and-the-Council-of-Minister-of-the-Albanian-Republic-1-1.pdf

[25] See: https://apnews.com/article/albania-migrants-italy-deal-asylum-rescue-vote-1a501095a7c67e6c8910f3d938dc2938

NGOs in Italian waters can apply for asylum in Italy, while only those that have been taken onboard vessels of Italian authorities outside the waters of Italy and other EU states will be transferred to Albania. The agreement costs Italy €160 million and provides that the centers are managed by Italian staff and are under the oversight of Italian judges. Nevertheless, a Roman court recently ruled that migrants under the deal could not be detained offshore, as their countries of origin were deemed unsafe.[26] The deal as such was halted and any Italian personnel already present in the Asylum centers was withdrawn.

Return hubs

Recently, the concept of "return hubs" has been widely discussed at the EU level as another potential pathway of managing migration and asylum flows through concluding third country agreements. Indeed, European Commission President von der Leyen raised this issue as an "innovative solution" to combat irregular migration.[27] In March 2025, the European Commission included a legal basis for return hubs in its proposal for a Return Regulation.[28] In contrast with what is applicable today, the proposal provides for a common format under which some of the rejected migrants could be transferred to facilities located outside EU territory, waiting for their final removal. As such, these third countries are seen as a transit zone for deported individuals. Similarly to agreements externalizing asylum procedures, the third country involved is not expected to be part of the determination procedure for the individual's asylum status.

Although there are no definitive examples of this type of agreement yet, the Italy-Albania agreement appears to be evolving into such a model, particularly with the recent transfer of asylum seekers rejected by Italy to centers in Albania.[29] However, it remains unclear at the time of writing what procedural safeguards apply to the individuals transferred. For instance, how any subsequent return procedures are to be conducted and monitored, who holds responsibility for these processes and whether effective remedies are available.

Problematic aspects of EU deals with third countries

All agreements, despite their diverse forms, share certain fundamental problems. Issues that arise – while too complex to be thoroughly examined here and thus only briefly sketched out – include the lack of rule of law safeguards, the lack of transparency and accountability, as well as the widespread, often foreseeable, human rights violations.

Rule of Law Deficiencies

Democratic Oversight

The agreements discussed exhibit a lack of democratic oversight throughout their inception and implementation stages. Migration agreements are frequently criticized for their high level of informality.[30] Negotiations are often conducted behind closed doors, in response to rapidly changing situations, and are intentionally placed in ambiguous legal formats like Memoranda of Understanding or Press Release Statements. Financial and structural support agreements are

[26] See: https://www.theguardian.com/world/2024/oct/18/blow-to-melonis-albania-deal-as-court-orders-asylum-seekers-return-to-italy

[27] See: supra note 1

[28] See further analysis of and recommendations on return hubs in the Meijers Committee comment on the Proposal for a Returns Regulation: https://www.commissie-meijers.nl/comment/meijers-committee-comment-on-the-proposal-for-a-return-regulation/

[29] See: https://www.hrw.org/news/2025/04/02/new-risks-latest-scheme-under-italy-albania-immigration-deal

[30] See: https://www.mignex.org/sites/default/files/2024-04/d095c-mpb-informality-v1-18-04-2024.pdf

often framed as development or trade deals, obscuring their migration management elements and complicating risk assessments. Politically sensitive aspects, such as financial terms and partnerships, are often negotiated outside formal agreements and kept unpublished, allowing governments to collaborate with entities like intelligence services and private security companies without (European or national) parliamentary oversight.[31]

As a result, it is difficult to guarantee that these agreements are implemented in accordance with EU, international and national legal standards. In order to negotiate a legally-binding international agreement, the Commission requires the consent of the European Parliament on the basis of Article 218 TFEU, which must be informed throughout the process.[32] In addition, Article 218(11) allows for a referral of the envisaged agreement to the Court of Justice of the European Union (CJEU) to assess its compatibility with the Treaties, whose negative assessment can prevent the agreement's implementation. Hence, the non-binding and informal nature of the deals discussed may weaken the democratic control over the deals, especially considering the lack of the European Parliament's involvement in their conclusion and the exclusion of direct scrutiny by the CJEU over them.[33] Similarly for agreements between individual Member States and third countries, informally agreed deals such as the EU-Turkey Statement also evade scrutiny by national parliaments and courts, which usually are necessary steps for formal treaties to enter into force.[34]

Judicial Control and Access to Justice

In addition, the correct implementation of the agreed terms of cooperation, including steps safeguarding the observance of EU and international human rights standards, is challenging. This is true for several reasons, including the cross-border nature of these deals and the physical distance between parties that create practical difficulties in legal oversight. Moreover, the lack of transparency stemming from the informal nature of these agreements further complicates enforcement and protection of individual rights.[35]

The lack of democratic and legal oversight of these deals subsequently results in limited checks and balances. This is due to restrictions on courts' jurisdiction that can potentially review these agreements, as well as obstacles in access to justice for individuals subjected to these schemes.

In regard to the former, the CJEU can only review the legality of acts of the EU, and national courts only acts of their own state.[36] In the case of the agreements discussed, the practical involvement of Member States or EU bodies in migration management is minimal or not outlined in transparent and legally binding documents. As a result, establishing the jurisdiction of EU or national courts is challenging, further obscuring accountability pathways. In relation to access to justice, victims of human rights violations are located in the third country, are in vulnerable positions, and lack means to appeal to an EU authority or that of a Member State. As such, it is unlikely that they will be able to bring cases concerning human rights violations that resulted from the implementation of these agreements.

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[31] See: https://spectator.clingendael.org/pub/2018/4/the-future-of-eu-migration-deals/

[32] See: https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12008E218:en:HTML

[33] Tineke Strik, and Ruben Robbesom. "Compliance or complicity? An analysis of the EU-Tunisia deal in the context of the externalisation of migration control." *Netherlands International Law Review* (2024).

[34] See for instance: Sandrino Smeets and Derek Beach. "When success is an orphan: informal institutional governance and the EU–Turkey deal." *West European Politics* 43.1 (2020): 129-158.

[35] For instance, see: Mauro Gatti. "The right to transparency in the external dimension of the EU migration policy: Past and future secrets." *The Informalisation of the EU's External Action in the Field of Migration and Asylum* (2022).

[36] See: Paula García Andrade. "The External Dimension of the EU Immigration and Asylum Policies Before the Court of Justice." *European Papers-A Journal on Law and Integration* 2022.1 (2022).

The deficit in the democratic safeguards of the legislative process, the lack of transparency coupled with the physical distance between the EU and its third country partners, and limited access to justice result in a complete lack of oversight both before and during implementation of the agreements on political as well as on legal level. Taken together, all the above indicate a clear contravention with the rule of law principle and highlight obstacles in accessing justice. This in turn can be quite problematic considering the existing corruption in several of the partner countries,[37] as well as the human rights risks present in most of the third countries discussed.

Human Rights Implications

Migration agreements can be problematic also from a human rights perspective. Often European police and immigration services have been blamed for collaborating with organizations that have been shown to be responsible for torture, disappearance and sacrificing human rights for the sake of stopping migration. Recently, the EU has been under scrutiny from many organizations due to abuses against migrants and asylum seekers in North African countries.[38] For example, according to the organization Human Rights Watch, refugees and asylum seekers in Egypt have been subject to arbitrary detention, physical abuse and refoulement.[39] Similarly, severe abuses against black Africans by Tunisian security forces have been reported.[40]

While these allegations are often corroborated with evidence-based reports and fact-finding investigations, existing prohibitions of rendering aid or assistance in the commission of human rights violations are difficult to enforce in practice. Under international law, Article 16 of the Articles on the Responsibility of States for Internationally Wrongful Acts (ARSIWA) indicates that responsibility may arise when a State aids or assists another State to engage in conduct that violates international obligations,[41] such as the prohibition against torture and inhumane treatment generally recognized under International and European law. Nonetheless, this responsibility is hard to prove, considering that the aid must not be too remote from the internationally wrongful conduct, so the interest of international cooperation is also safeguarded. Scholars underscore the difficulties in proving that a State provided aid to a third country precisely with the aim of committing an internationally wrongful act, such as violating migrants' rights.[42] Similarly, in the European Court of Human Rights' (ECtHR) case law the responsibility for enabling and supporting of operations in full knowledge of the high likelihood that individuals would be subjected to torture, has been previously recognized.[43] However that is only under a very high threshold and very specific circumstances. This legal gap regarding the Member States' obligations in assisting third countries is also what makes these agreements so appealing to them, as they can actively exploit the legal uncertainty and evade responsibility for human rights violations committed by the third countries.

At the same time, it is very unlikely that Member States can be held directly accountable for violations committed in the third countries under these agreements. This is mostly due to the

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[37] See https://www.transparency.org/en/cpi/2023

[38] See: https://ecre.org/eu-external-partners-investigation-reveals-eu-funding-security-forces-accused-of-migrant-abuse-in-tunisia-%E2%80%95-leaked-report-reveals-eu-concerns-about-credibility-risk-of-migration-co-operation/

[39] See: https://www.hrw.org/world-report/2023/country-chapters/egypt

[40] See: https://www.ibanet.org/Migration-Europe-intensifies-push-for-third-country-solutions

[41] Responsibility of States for Internationally Wrongful Acts (ARSIWA) 2001 https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_200 1.pdf

[42] See for instance Tamás Molnár. "EU Member States' Responsibility Under International Law for Breaching Human Rights When Cooperating with Third Countries on Migration: Grey Zones of Law in Selected Scenarios." *European Papers-A Journal on Law and Integration* 2023.2 (2023), pp.1026-1028.

[43] ECtHR, *Al Nashiri v Poland,* App n. 28761/11 (24 July 2014). See judgment: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22002-9596%22]}

lack of jurisdictional links allowing for extraterritorial applicability of human rights instruments that Member States and the EU have committed to. While several different models of jurisdiction have emerged, depending on the human rights legislation being applied and its interpretation by courts, jurisdiction is most commonly understood quite restrictively and within territorial limits.[44] Actually, states have been accused of utilizing agreements such as the ones discussed and outsourcing migration tasks precisely to avoid exercising jurisdiction and thus also to evade responsibility and human rights obligations during the implementation of these deals.[45]

While Member States cannot be held directly accountable for the violations committed in the third countries, there are a few pathways where direct responsibility can be observed. This mostly concerns the removal of individuals under the scheme to unsafe countries.

For example, Turkey's designation as a "safe third country" under international and EU law remains highly disputed, especially after the country suspended certain provisions of the European Convention on Human Rights (ECHR).[46] Similarly, Hungary's classification of Serbia as safe has been challenged before the ECtHR. In the case of *Ilias and Ahmed v. Hungary*, the Court found Hungary in breach of its ECHR obligations for failing to properly assess the risks faced by applicants returning to Serbia.[47] Rwanda's safety has also been contested in both British courts and the ECtHR in cases such as *R (AAA and others) v Secretary of State for the Home Department*[48] and *NSK v United Kingdom*.[49] As such, European states, including EU Member States, are prohibited to withdraw from refugee protection by classifying countries along refugee routes as “safe”, despite knowing that in reality they are not secure for returns.

The above exhibit that the misapplication of the notions of “safe third country”, in contrast with the ECtHR’s findings, may involve a violation of the principle of non-refoulement. Article 4 and 19 of the Charter of Fundamental Rights as well as Article 3 ECHR and 33 of the Refugee Convention prohibit sending an individual to a country where they can potentially face serious threats to their life and freedoms.[50] As explained, many of the collaborating countries are of unsafe status and human rights violations are prominent in them. Additionally, under the agreements outsourcing asylum responsibilities, such as the UK-Rwanda agreement, the protection claims would be assessed by the third country, making it even harder to observe the safeguarding of the non-refoulement doctrine.

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[44] For more on the notion of jurisdiction see for instance: Sorina Doroga. "Extraterritorial Human Rights Obligations and the European Union." *Law Series Annals WU Timisoara* (2024); Kamran Khalilov. "Extraterritorial Jurisdiction of the ECHR in the Context of Analysis of Relevant Cases: Which Model Is Effective?." *Baku St. UL Rev.* 10 (2024).

[45] See for instance Annick Pijnenburg. "Externalisation of Migration Control: Impunity or Accountability for Human Rights Violations?." *Netherlands International Law Review* 71.1 (2024); Margherita Matera, Tamara Tubakovic, and Philomena Murray. "Is Australia a model for the UK? A critical assessment of parallels of cruelty in refugee externalization policies." *Journal of Refugee Studies* 36.2 (2023).

[46] See https://www.europeanlawblog.eu/pub/8iugyeg7/release/1 in regards to CJEU recent judgment in C-134/23 Elliniko Symvoulio.

[47] ECtHR, *Ilias and Ahmed v. Hungary*, Application no. 47287/15, https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-172091%22

[48] See judgment: https://www.refworld.org/jurisprudence/caselaw/gbrcaciv/2023/en/124332

[49] See ECtHR Press Release: https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=003-7620973-10489477&filename=Court%20gives%20notification%20of%20case%20concerning%20asylum%20seeker

[50] Articles 4 and 19, 2000 Charter 0f Fundamental Rights of The European Union https://www.europarl.europa.eu/charter/pdf/text_en.pdf;
Article 3, 1953 ECHR https://www.echr.coe.int/documents/d/echr/convention_eng;
Article 33, 1951 Refugee Convention https://www.unhcr.org/about-unhcr/overview/1951-refugee-convention

As for the return hubs, lawyers and civil society are warning of the risks of implementing such a scheme.[51] Besides the common risks of all migration agreements, including lack of transparency, difficulties in monitoring, and non-refoulement concerns, the return hubs add another layer of prolonging individual's suffering. Importantly, in a 2018 document, the Commission in its own assessment found that "externally-located return centers" would be unlawful because EU law prevents sending migrants "against their will" to a country they do not come from or have not passed through.[52] While the Commission has since changed its stance, the fact that it previously deemed such centers unlawful remains a significant indication of the legal concerns they raise.

Conclusion

Against this backdrop, the variety of deals concluded with third countries, the manner in which they are negotiated, and their non-binding form create an accountability gap difficult to reconcile. Certainly, channels for accountability depend on the nature and distinct features of various externalisation practices, including the complex nature of situations where multiple actors are involved.[53] Nevertheless, we see that most agreements discussed, share the following commonalities: lack of democratic safeguards and transparency in their conception and negotiation - great safeguards of the EU's rule of law, widespread human rights concerns in the third countries, including risks of refoulement for individuals subjected to these schemes, as well as blurred accountability lines and lack of access to justice. This has the effect of blurring accountability pathways for individuals subjected to them. Truly, while purportedly addressing security concerns, these agreements often leave vulnerable individuals outside the protective ambit of international human rights.[54] These are difficult to enforce in international courts or forums, as jurisdictional links are hard to argue and accessibility for individuals remains cumbersome.

In light of the above, the Meijers Committee provides several recommendations to be taken into account by the EU institutions and Member States when further negotiating migration management deals with third countries.

Recommendations

Procedure establishing Agreements

- **Strengthen legal frameworks and close formal agreements:** The Council and Commission must ensure that migration deals are formalized through legally binding agreements, pursuant to Article 218 TFEU, rather than informal arrangements. This approach ensures accountability, democratic oversight, and transparency, and provides clearer safeguards for human rights.

- **Strengthen democratic oversight during negotiations:** In regard to agreements between the EU and third countries, the European Parliament must be systematically involved in their negotiation, approval, and oversight, as envisaged in Article 218(6) TFEU. Regular, detailed updates to the European Parliament should be mandatory, alongside public consultations at multiple stages. Additionally, an annual report must be published to ensure democratic scrutiny and allow civil society input. Similarly, for agreements

[51] See for instance: FRA report "Planned return hubs in third countries: EU fundamental rights law issues" https://fra.europa.eu/en/publication/2025/return-hubs#read-online

[52] See:https://www.statewatch.org/media/documents/news/2018/jul/eu-council-com-paper-disembarkation-options.pdf

[53] Nicolosi, Salvatore Fabio. "Externalisation of Migration Controls: A Taxonomy of Practices and Their Implications in International and European Law." *Netherlands International Law Review* 71.1 (2024), p14. https://link.springer.com/content/pdf/10.1007/s40802-024-00253-9.pdf

[54] Idem, p.15.

conducted by Member States, national parliaments must have a similar role in the oversight of such negotiations.

- **Ensuring national judicial oversight:** National courts should be competent to review migration agreements to guarantee their constitutionality and compliance with fundamental rights. This is particularly relevant given recent rulings by Member State courts on agreements such as the UK-Rwanda and Italy-Albania. Individuals subjected to these deals must have direct access to national courts to challenge their legality.

- **Ex-ante fundamental rights impact assessment:** Prior to finalising agreements, the European Commission must conduct a fundamental rights impact assessment to evaluate potential risks, assess human rights protections in the partner country, and propose mitigation measures. Agreements without sufficient safeguards for fundamental rights, especially those guaranteed in Articles 4, 19, and 47 of the Charter, should not be concluded, neither by the Union nor by Member States.

Substantive Provisions

- **Explicit and enforceable human rights clauses:** The Council and Commission must explicitly incorporate enforceable human rights clauses in agreements, with clear and binding human rights safeguards. These provisions should cover access to justice, protection against refoulement, prohibition of arbitrary detention, and exemptions from applying such agreements on vulnerable individuals and minors. They must also specify responsibilities for the EU and Member States, detailing legal consequences for non-compliance.

- **Judicial oversight and access to justice:** Individuals affected by the implementation of migration agreements must have access to effective judicial remedies. National courts in Member States or the CJEU for EU actions must be accessible for legal challenges related to the protection of non-refoulement and other human right violations connected with expulsion and detention.

Implementation

- **Fundamental rights applicability:** Migration agreements should include a provision confirming that it implements EU law. This would trigger the application of the Charter of Fundamental Rights, ensuring that all actions taken under such agreements should comply with fundamental rights standards.

- **Independent monitoring and reporting mechanisms:** A dedicated independent monitoring framework must be established, or an experienced human rights organization must be designated to oversee implementation of the third state agreements in accordance with human rights. Oversight bodies such as the European Ombudsman, national human rights institutions in Member States, and relevant international organizations should be mandated to monitor compliance. Their assessments and reports on the impact of these agreements must be made publicly available. The Commission must exercise its oversight powers in cases of fundamental rights breaches identified in these monitoring reports.

- **EU funding and accountability:**[55] The European Commission, in collaboration with the European Parliament, must ensure stringent oversight of EU funding allocated to third-

[55] A similar recommendation can be found in the recent FRA report on return hubs. See: https://fra.europa.eu/en/publication/2025/return-hubs#read-online

country migration agreements. An annual report must detail expenditures and subsequently fundamental rights compliance, covering both initial implementation and post-return treatment to ensure ongoing human rights adherence.

- **Strengthening complaint mechanism:** Without prejudice to the individuals' right to access to justice, a robust, accessible and well-sourced complaint mechanism must be embedded within existing EU frameworks. Instead of creating a new mechanism, the European Commission should integrate this process into established EU mechanisms, such as the European Ombudsman, and use the experience of the Fundamental Rights Agency, allowing individuals in both the EU and third countries to report rights violations.

- **Public transparency and documentation:** Fundamental rights impact assessments, financial reports, operational plans and monitoring results must be made publicly accessible on a common platform. This platform should be managed by the European Commission, or a designated supervisory body such as the European Ombudsman, ensuring transparency and facilitating democratic oversight.

About

The Meijers Committee is an independent group of experts that researches and advises on European criminal, migration, refugee, privacy, non-discrimination and constitutional law.

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