EXTERNAL MIGRATION POLICIES UNDER THE HUMAN RIGHTS LENS: A SELF-ASSESSMENT TOOL



COMMISSIONER FOR HUMAN RIGHTS
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EXTERNAL MIGRATION POLICIES UNDER THE HUMAN RIGHTS LENS: A SELF-ASSESSMENT TOOL

Michael O'Flaherty

Council of Europe
Commissioner for Human Rights

Council of Europe

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Introduction

Several Council of Europe member states are pursuing policies aiming at moving the processing or granting of asylum to other countries, implementing return procedures externally, and/or establishing external cooperation to prevent irregular border crossings into Europe. Inadequate consideration of the human rights aspects of such policies would trigger grave risks for the people involved.

There is increasing recognition that identifying and addressing human rights risks from the outset – to address systemic weaknesses and prevent violations – should be part of any consideration of external asylum or migration cooperation activities. In this context, as a conclusion of his report "Externalised asylum and migration policies and human rights law" (September 2025), the Commissioner has called for Council of Europe member states to adopt a precautionary approach to such engagements.

The current document translates that approach into practical considerations for states. These considerations follow an analysis of states' human rights obligations, principles of state responsibility, and well-established human rights-based and due diligence approaches across various sectors. The text draws on independent analysis and consultations with a range of actors and experts from institutions, civil society and academia.

The following areas are addressed:

1. Defining the scope of the proposed cooperation
2. Comprehensively assessing human rights risks
3. Deciding on prevention and mitigation measures
4. Monitoring cooperation implementation
5. Reacting to violations and providing remedies
6. Ensuring transparency, democratic scrutiny and follow-up

Consideration of each of these areas should contribute to the avoidance of non-compliant modes of cooperation, and to the adoption of evidence-based policies designed to prevent harm. Furthermore, the considerations contribute to the promotion of fair and accountable governance, as a key component of the principle of good administration.

Getting things right from the outset is crucial, as experience indicates that making adjustments once cooperation is underway is much more difficult. Thus, this document is intended primarily for authorities exploring the possibility of engaging in new external cooperation initiatives, including in relation to "return hubs", and should inform their development from the outset. It can also provide insights to states on how to improve external cooperation activities that may already be underway. Indeed, a rights-compliant approach requires continuous engagement with these elements for the duration of the cooperation.

This document does not imply the Commissioner's endorsement of any specific external cooperation activity, nor does following the steps indicated below guarantee compliance with human rights.

While the document offers proposed considerations to help authorities demonstrate due diligence, states remain responsible for ensuring that their activities comply with human rights obligations in each specific case.

For an in-depth examination of the international, European and EU standards that are at play in different types of cooperation, please refer to the Commissioner's report, as well as the resources listed at the end of this document.

1 Defining the scope of the proposed cooperation

Whenever authorities explore forms of external cooperation on migration, and before they conclude any agreements, they should provide a clear description of the type of cooperation envisaged. This should define the goals of the cooperation and the manner in which it would be implemented.

Content and goals of cooperation



Core elements

- Does the proposal involve the transfer of asylum seekers or of people subject to return procedures, or cooperation on border management with a partner country, other forms of cooperation, or a combination thereof?
- Would cooperation result in the provision of equipment, financial support, or information, in the establishment of reception or detention centres or other facilities, training, or any other activities?



Objectives

- Which policy objectives are envisaged?
- Are there less intrusive and risky measures through which the same goals could be pursued?



Location

- Where would cooperation take place?
- Which authorities or non-state actors would be involved, either in the sending or funding state, or in the receiving state?



Funding

- Which sources of funding are being mobilised?
- Where different sources are used, how do these interact and who has responsibility for the allocation and oversight in each case?
- What human rights conditionalities are attached to each of the funding sources?

Legal context



Legal form

- Will the cooperation be based on a formal agreement, binding under international law?
- Is it concluded under the authority of member states, international organisations, the EU or any other actor?
- Are adequate and enforceable legal guarantees – including on the prevention and mitigation of human rights risks, effective and independent monitoring, remedies and reactions to violations, and transparency and accountability – enshrined in the agreement?



Jurisdiction

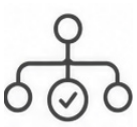
- Would any powers or responsibilities be transferred, delegated or exercised jointly as part of the cooperation?
- Which state is foreseen to exercise jurisdiction over people transferred to or staying in the partner country at each stage of the process?
- If forms of shared jurisdiction are foreseen, how is it ensured that each state involved retains responsibility, in line with international standards?
- Which specific laws of the participating states govern the treatment of people who are affected by the cooperation at each stage?
- Where activities are implemented, supported or coordinated by international organisations, agencies or other third parties, are responsibilities, reporting lines and accountability arrangements clearly identified, to ensure that the cooperation does not leave those affected outside the effective exercise of jurisdiction by state authorities, and does not affect the ability to identify and hold accountable all responsible actors, including participating states?



Legal advice

- Have authorities sought and received legal advice on the international, EU (if applicable) and domestic legal obligations applicable in the context and the potential issues at stake?

Initial human rights considerations



Choice of model and risk level

- Does the proposed model fall into one of the categories of cooperation that are more likely to contribute to violations, such as forms of cooperation in which core functions relating to asylum processing, returns or border management are transferred or delegated to other countries?
- Does the proposed model risk shifting, diffusing or obscuring legal responsibility for the protection of refugees, asylum seekers and migrants?
- Could the cooperation foreseeably contribute to, facilitate or enable human rights violations or abuses by partner authorities or other actors, including outside the territory of the member state?
- Is the due diligence process foreseen commensurate with the risk level of the specific activity?



Choice of partner countries

- Which criteria guide partner country choices, and do these adequately include a country's human rights record, its human rights obligations, and the potential impact of cooperation on the overall human rights situation?
- Is an initial analysis of the partner's institutions, laws, policies and practices indicative of a capacity to carry out agreed activities in compliance with human rights law?



Affected people

- Who could be affected by the cooperation?
- Are they in a situation of specific vulnerability, or will they be because of the cooperation?
- Do they have a personal connection or cultural, linguistic, or geographic ties with the partner country where they are processed, received or subjected to return procedures?
- If not, is it reasonable and proportionate to provide for their transfer to that country, or are there less intrusive options available?



Information

- Is there sufficient available information to adequately assess the human rights situation in the partner country and the human rights implications of the proposed cooperation, or is further information gathering required?

2 Comprehensively assessing human rights risks

Before engaging in any form of external cooperation on asylum and migration, and in particular in external cooperation contemplating coercive measures – such as transfers, preventing departures from a country, limiting access to asylum, or detention – authorities should conduct a comprehensive assessment of the human rights impacts of the cooperation.

Human rights risk assessment



Assessment

- ○ Have authorities developed a comprehensive framework for the ex ante assessment of the potential direct or indirect human rights risks associated with the proposed cooperation?
- ○ Does this cover the potential impacts of each of the envisaged activities, classified according to likelihood and severity, on the basis of objective evidence?
- ○ Is the assessment regularly updated in view of any changes in the political, legal and operational context?



Relevant standards

- ○ Has an inventory been made of all the legal standards that would be impacted by the activity and does the assessment engage with each of these?
- ○ Has specific attention been paid to rights that cannot be derogated from or limited at any time?



Guidance

- ○ Have authorities established guidance on how to carry out a risk analysis and implement risk management along the cooperation cycle?
- ○ Is this being used for both the negotiation of agreements and the development of specific projects?
- ○ Is there a contractual obligation for implementing partners to ensure human rights due diligence and compliance with human rights obligations at all stages of implementation?



Sources

- ○ Is the assessment based on objective information from a variety of reliable sources?
- ○ Have relevant operational agencies, international and national human rights bodies, civil society organisations, and experts been enabled to contribute?
- ○ Have field visits been undertaken to ensure an adequate understanding on the ground in the place(s) where the activities will be undertaken?

Risks linked to the member state's own domestic systems



Mapping

- ○ Have risks linked to potential weaknesses of the sending state's domestic systems been mapped?
- ○ Does this mapping cover all the systems that come into play before a person is transferred to a partner country (e.g. asylum systems, returns procedures, protection and assessment mechanisms on trafficking in human beings, judicial procedures)?



Access to relevant procedures

- ○ Has the mapping shown that a transfer of a person from the sending state to the receiving country would meet all international obligations, including with regard to access to fair and effective asylum procedures, the prohibition of refoulement, safeguards against arbitrary detention, the protection of the best interests of the child and of family unity, and the availability and effectiveness of judicial remedies?
- ○ Do domestic systems ensure that people in situations of particular vulnerability, such as children and victims of torture, trafficking in human beings and gender-based violence, are promptly identified, excluded from transfers to external asylum or return procedures, and provided with adequate assistance?

Risks linked to the situation in the partner country



General human rights situation

- What assessment has been carried out of the prospective partner country's security situation, human rights record, ratification of relevant treaties, and willingness and ability to comply with international standards?
- What assessment has been made of the overall compliance and any weaknesses of the systems relevant to the cooperation (such as the country's asylum, judicial, police, reception, healthcare, social, and detention systems, as relevant)?
- Is the assessment up to date?
- Has this been done based on the partner country's laws, policies and practices?
- Is the justice system effective in ensuring access to remedy?



Specific human rights risks for refugees and migrants

- Has the assessment considered the treatment of foreign nationals, and what legal status would be accessible to them immediately and over time?
- Will the partner country (re)admit the person, respect the right of asylum seekers to remain pending determination, and grant them access to a fair and efficient procedure?
- Are effective guarantees against refoulement in place?
- Is the right to an effective remedy, including in relation to possible onward returns from the partner country, guaranteed?
- Are there measures to prevent arbitrary detention, and guarantees that any deprivation of liberty is a measure of last resort, based on an individual assessment and undertaken in appropriate conditions, and with strong safeguards against ill-treatment?
- What is the capacity of reception and social protection frameworks to ensure adequate access to the full range of social rights?
- Are there issues in relation to specific groups?
- Are there effective mechanisms for the identification, referral and care of persons in situations of vulnerability?



Potential impact of envisaged activities

- Does any element of the cooperation create or expand the operational, coercive or enforcement capacity of the partner state in ways that increase the risk or impact of human rights violations?
- In this respect, has specific consideration been given to the possible impact of:
  - The provision of equipment, assets or technological support
  - Financial support
  - Training
  - The provision of personal or biometric data or other sensitive information, or of a capacity to collect, process or exchange such data or information
  - Political support
  - Or any other form of cooperation that may be relevant.



Implementing actors

- Have the authorities identified all actors that will be involved in implementing the cooperation or exercising relevant functions in practice (including, where applicable, development agencies, police, military or security forces, coastguards, intelligence services, local authorities, international organisations and private contractors)?
- Has an assessment been made of their mandate, human rights record, operational practices and training, as well as of the oversight and accountability mechanisms applicable to their conduct?



Wider risks

- What wider impacts might cooperation bring, including as regards the country's stability and governance, which might lead to adverse effects on human rights?
- What risks might arise for civil society and human rights defenders?
- What is the likelihood of this cooperation leading to shifts in migratory routes that would potentially expose people to enhanced danger?
- What risks exist of partner countries leveraging cooperation to dilute human rights scrutiny and accountability or extract concessions in other fields?
- Is there a risk that cooperation may contribute to shifting responsibility towards countries already hosting significant displaced populations, placing additional pressure on reception and protection systems?

3 Deciding on prevention and mitigation measures

In order to ensure that external cooperation does not result in or contribute to human rights violations, the human rights risk assessment should be followed by the adoption of measures capable of preventing risks from materialising or mitigating and remedying their effects.

Decisions and plans



Informed decisions on cooperation

- Has it been established, on the basis of the risk assessment, whether the proposed cooperation can lawfully proceed, whether it requires substantial redesign or additional safeguards, or whether the identified risks are such that the cooperation should not be pursued?



Prevention and mitigation plans

- For each of the risks identified, have actions been set out that would effectively prevent these from occurring or mitigate their impact to an acceptable level?
- Are these measures specific, effective, legally enforceable, gender-sensitive, and embedded in the cooperation agreement and relevant arrangements for implementation?
- If any such measures could potentially raise new human rights risks, have these been adequately assessed and addressed?

Concrete application



Implementation

- Are mechanisms set up to ensure that the prevention and mitigation measures are implemented in practice, and regularly reviewed, for the whole duration of the cooperation?
- Has a specific, adequate budget been allocated for their implementation?
- If mitigation measures are aimed at improving existing systems, has due account been taken of the fact that improvements may need time to materialise?
- Are responsibilities for implementing each measure clearly allocated across all relevant actors, including authorities and implementing partners?
- Where the agreement of partner country authorities or implementing partners is necessary to ensure the adoption of measures, have they made clear and enforceable commitments?



Safeguards for high-risk activities

- Are specific safeguards being established for activities presenting specific human rights risks, such as border surveillance, rescues/interceptions, detention, and transfers or returns (including when these are considered 'voluntary') of persons?
- Have the specific risks faced by particularly vulnerable groups been addressed through tailored safeguards, including the exclusion of children from externalised processing?

4 Monitoring cooperation implementation

Independent and effective monitoring of human rights compliance should be considered from the outset and integrated in the design of any relevant external cooperation activity. This is crucial to assess whether any of the foreseen risks or other human rights issues arise in the implementation of the cooperation activity.

Scope and organisation of monitoring



Monitoring function

- Has a human rights monitoring function been integrated in the cooperation?
- Has this been explicitly formalised in the cooperation agreement?
- What is the time horizon for monitoring to continue and on which considerations has this been determined?
- If new monitoring mechanisms are established, do these act in complementarity with existing human rights bodies of the different cooperating states, such as national human rights institutions (NHRIs), national preventative mechanisms (NPMs) and international organisations and bodies?
- Does the framework ensure continuity of monitoring when individuals are transferred from one country to another?
- Where international organisations or agencies play a role in the cooperation, does monitoring encompass their activities?
- If domestic legislation and practices allow for human rights bodies or civil society organisations to undertake monitoring functions, will these also be applied in relevant external settings?



Alignment with activities and risks

- Is the scope of monitoring broad enough to adequately cover all the activities and the risks identified in the human rights risk assessment?
- Does it devote particular attention to serious risks?
- Does the monitoring framework include adequate measures to ensure the safety of both those carrying out the monitoring and of individuals and civil society organisations engaging with monitoring activities, including to prevent reprisals, intimidation or other security issues?



Reporting and escalation

- Are there clear procedures for ensuring: adequate and regular reporting, including an obligation for relevant personnel to report violations; that credible allegations of violations and monitoring results are promptly communicated to the relevant decision makers; and that they can trigger immediate and appropriate corrective action by the relevant authorities?

Essential requirements



Independence

- Is the monitoring function attributed to bodies that are independent, in line with international standards and best practice?
- Will the monitoring take into account information from a variety of credible sources, including national human rights bodies, non-governmental organisations and international organisations?



Resources

- Are the relevant monitoring bodies provided with adequate human and financial resources to ensure they can undertake the breadth of their responsibilities?



Access

- Are such bodies provided with unrestricted access, including through unannounced visits, to relevant locations, facilities, documents, information and individuals?
- Are they enabled to observe all relevant operations, including border surveillance, search-and-rescue activities, and any deprivation of liberty?
- Are clear provisions included in the cooperation agreements to this effect?



Openness

- Are adequate safeguards in place to ensure that individuals, personnel, civil society organisations, national human rights bodies and other actors can communicate with monitoring bodies confidentially and without fear of adverse consequences?
- Are arrangements in place to make sure that any non-disclosure clauses do not hamper the ability of relevant personnel to ensure adequate reporting and escalation?

5 Reacting to violations and providing remedies

Adequate mechanisms and procedures to identify and address violations, both at the individual and the systemic level, should be incorporated in the design of any external cooperation agreements. These should also indicate how rights-holders and other stakeholders can access relevant procedures, and how the parties will react to violations, to ensure enforceability of relevant obligations.

Responses to individual violations



Complaint mechanisms

- Are there safe, clear, accessible and effective avenues for individuals to lodge complaints with each of the relevant states involved in the cooperation?
- Are there effective avenues for complaints with independent bodies, such as NHRIs, NPMs, Ombuds institutions or other oversight bodies, available to both directly affected persons and third parties, and do they cover both individual violations and broader patterns of violations?
- Are independent bodies enabled to examine complaints promptly and impartially, and can these lead to effective redress and enforcement?



Judicial remedies

- What effective judicial remedies are available to individuals affected by the cooperation?
- Are the relevant judicial authorities sufficiently independent?
- Are these judicial authorities able to enforce compliance of all relevant parties involved in the cooperation framework?
- If not, what additional measures need to be put in place to make this possible?
- Do remedies include the possibility of returning a person to the sending state if their initial transfer to a partner country is found to be in breach of the law?



Procedures and investigations

- Are clear procedures established for responding to allegations of human rights violations arising from the cooperation, indicating who is responsible for pursuing investigations and taking action?
- Are these capable of leading to the identification and redress of violations, including the accountability of those responsible, provision of adequate reparation, and the adoption of corrective measures?



Accessibility

- Are complaint mechanisms and judicial remedies accessible in practice regardless of an individual's location, legal and financial status or situation of vulnerability?
- Is information about their existence and functioning publicly available?
- Are authorities ensuring appropriate provision of information, interpretation, and legal assistance – including free legal assistance if needed?
- Are relevant procedures simple and user-friendly?
- Are there clear safeguards to prevent retaliation against individuals or entities involved in complaints or judicial procedures?

Responses to systemic issues



Review and switch-off mechanism

- Do monitoring, individual complaints, judicial investigations and other feedback mechanisms inform an ongoing review of the overall human rights compliance of the cooperation?
- Does the framework provide for the cooperation agreement and its implementation arrangements to be reviewed and modified when evidence demonstrates that existing safeguards are ineffective or that new systemic risks have emerged?
- Does the agreement establish legally enforceable and objective criteria, and an effective mechanism, for suspending or terminating cooperation and related contracts, where serious or persistent human rights violations occur?



Procedure

- Are the triggers, thresholds, procedures and decision-making responsibilities for review, suspension or termination of the cooperation clearly defined and protected from political interference?
- Are avenues available for rights-holders, civil society organisations and other stakeholders to engage in the process?
- Are mechanisms in place for the recovery of assets, equipment or other items provided to a partner country that have been used in human rights violations?

6 Ensuring transparency, democratic scrutiny and follow-up

The cooperation agreement and its implementing arrangements should be negotiated, concluded and communicated in a way that allows for transparency and accountability, thus allowing parliamentary, judicial and public human rights scrutiny. This should include rules on publication and access to information, as well as on access to accountability mechanisms.

Ensuring transparency and accountability



Transparency

- ○ Are the agreement and relevant implementing arrangements publicly available and accessible?
- ○ Are authorities publishing relevant human rights risk assessments, prevention and mitigation plans, monitoring arrangements and outcomes?
- ○ Are authorities publishing operational data on the concrete implementation of the agreement, including disaggregated data on the impact of the cooperation on specific groups, based on existing judicial remedies, complaint mechanisms and monitoring processes?



Parliamentary scrutiny

- ○ Has the agreement been subject to the appropriate parliamentary approval and ratification procedures in both partner countries?
- ○ Will parliament receive adequate information on monitoring findings and insights from complaints or judicial proceedings?
- ○ Can parliamentarians monitor the implementation of the cooperation?
- ○ Do parliamentarians have a role in the review and reform of cooperation?



Ongoing follow up

- ○ Are there mechanisms to ensure that transparency and accountability continue throughout the lifecycle of the cooperation, including before any renewal, extension, modification or termination of the agreement, and that these are conditional upon an updated human rights risk assessment?

Useful resources

Below is a non-exhaustive list of resources that may assist decision makers in their consideration of the questions set out in this document.

Insights into due diligence and/or human rights-based approaches as applied by international organisations:

- United Nations, Human rights due diligence policy on United Nations support to non-United Nations Security Forces – Guidance note and text of the policy, 2015.
- International Organisation for Migration, Human rights due diligence toolkit for IOM activities, 2025.
- European Commission, Applying the Human Rights Based Approach to international partnerships: an updated toolbox for placing rights-holders at the centre of EU's Neighbourhood, Development and International Cooperation, staff working document, SWD(2021) 179 final, 2021.

Further analysis – in addition to the Commissioner's 2025 report – on specific human rights issues that may arise in the implementation of international cooperation on asylum and migration, including recommendations to address these:

- UN Special Rapporteur on the human rights of migrants, Externalization of migration governance and its effects on the human rights of migrants, A/80/302, 4 August 2025.
- UN Special Rapporteur on the human rights of migrants: Externalization of migration governance: new trends and specific aspects, A/HRC/62/35, 14 May 2026.
- European Ombudsman, Decision on how the European Commission intends to guarantee respect for human rights in the context of the EU-Tunisia Memorandum of Understanding, OI/2/2024/MHZ, 21 October 2024.
- European Court of Auditors, Special report 17/2024 – The EU trust fund for Africa: Despite new approaches, support remained unfocused, 2024.

Resources on general international and European standards in relation to the treatment of refugees, asylum seekers and migrants:

- European Court of Human Rights, Guide on the case-law of the European Convention on Human Rights: Immigration, updated 28 February 2026 (the Guide is regularly updated on the Court's Knowledge Sharing Platform).
- EU Fundamental Rights Agence, the European Court of Human Rights, and the Council of Europe, Handbook on European law relating to asylum, borders and immigration, Edition 2026.
- UN Office of the High Commissioner for Human Rights, Recommended Principles and Guidelines on Human Rights at International Borders, 2014.
- Relevant General Comments and decisions from the UN treaty bodies, including those of the Human Rights Committee, the Committee Against Torture, and the Committee on the Rights of the Child.

Recommendations and guidance from the UN High Commissioner for Refugees (UNHCR) on specific aspects of international cooperation:

- International agreements for the transfer of refugees and asylum-seekers, 7 August 2025.
- The need for effective return systems and the potential role of return hubs, March 2025.
- Note on the 'externalization' of international protection, 28 May 2021.
- Legal considerations regarding access to protection and a connection between the refugee and the third country in the context of return or transfer to safe third countries, April 2018.

Relevant documents from the EU Fundamental Rights Agency (FRA) as regards EU laws and policies:

- Planned return hubs in third countries: EU fundamental rights law issues, 6 February 2025
- Monitoring fundamental rights during screening and the asylum border
- procedure – A guide on national independent mechanisms, 19 September 2024.
- Guidance on investigating alleged ill-treatment at borders, 30 July 2024.
- Better legislation – Human rights impact assessments in lawmaking, 8 December 2025.

Guidance on specific situations that may arise in international cooperation on asylum and migration, especially as regards the rescue or interception of migrants at sea:

- International Maritime Organisation, Res. MSC. 167(78), Guidelines on the treatment of persons rescued at sea, adopted on 20 May 2004.
- International Maritime Organisation, UN High Commissioner for Refugees, and the International Chamber of Shipping, Rescue at Sea: A guide to principles and practice in the context of refugees and migrants movements, May 2026.

The Commissioner for Human Rights is an independent and impartial non-judicial institution established in 1999 by the Council of Europe to promote awareness of and respect for human rights in the member states.

The activities of this institution focus on three major, closely related areas :

- country visits and dialogue with national authorities and civil society,
- thematic studies and advice on systematic human rights work, and
- awareness-raising activities.

The current Commissioner, Michael O'Flaherty, took up his funtions in April 2024. He succeeded Dunja Mijatović (2018-2024), Nils Muižnieks (2012-2018), Thomas Hammarberg (2006-2012) and Álvaro Gil-Robles (1999-2006).

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