



**Doc. 13867 – Compendium of written amendments**  
30/09/2015

**(Final version)**

## **Countries of transit: meeting new migration and asylum challenges**

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## A. Draft Resolution

1. Transit countries are countries that migrants cross on their way to their country of destination. Many migrants, however, do not have a clear destination when they start travelling. Once they have left their country, whether they decide to travel onwards and to where often depends on several factors. Countries that experience transit migration, in whatever form, are rarely if ever only “countries of transit”; many are also countries of destination and/or asylum.
2. The concept of “country of transit” has nevertheless come to play a key role in European policy, generally referring to European Union neighbouring countries from which the final step across the European Union’s external border is taken. However, several European Union member States located between the European Union’s external borders and migrants’ preferred final countries of destination also experience significant levels of transit migration.
3. Whilst there may be certain policy measures that apply specifically to countries of transit, migration policy should be seen in a global perspective: all of the countries from, through and to which a migrant may travel must co-operate and co-ordinate their actions, with the support and assistance of international actors such as the Office of the United Nations High Commissioner for Refugees (UNHCR), the International Organisation for Migration (IOM) and the European Union; and policies must focus on the situation of the individuals whose decisions and actions drive migration. The Parliamentary Assembly welcomes the fact that European Union policy increasingly recognises this imperative, as reflected in the European Commission’s “European Agenda on Migration” and the European Council’s conclusions of 26 June 2015. It considers that the Council of Europe, through its European Centre for Global Interdependence and Solidarity (North-South Centre), could play a part in enhancing capacities for dialogue to this end.
4. The European Union’s relations with countries of transit emphasise migration policy. This may be expressed in the form of “mobility partnerships”, which are part of the European Union’s “Global Approach on Migration Management” (GAMM). The result is “externalisation” of border control, shifting responsibility for preventing irregular migration into Europe onto the transit country. Transit countries are also asked to accept readmission agreements extending to third-country nationals, even if such persons cannot be returned to their countries of origin. This approach creates problems for transit countries in their internal socio-economic situation, as well as in their relations with neighbouring countries and countries of origin.
5. But most of all, externalisation of European Union border control has serious consequences for migrants and refugees. Large numbers may find their intended onward journey blocked and thus be stranded in the transit country. This may leave them in a situation of precarity and vulnerability, without legal status or protection or access to basic needs and therefore at risk of exploitation,

### **Amendment 14**

**Tabled by Mr Zsolt CSENGER-ZALÁN, Mr Serhii KIRAL, Lord Alexander DUNDEE, Mr Brian BINLEY, Ms Katalin CSÖBÖR, Ms Mónika BARTOS, Mr Volodymyr ARIEV, Mr Dmytro SHPENOV, Ms Barbara ROSENKRANZ, Mr Martin FRONC, Mr Tom PACKALÉN**

*In the draft resolution, paragraph 4, delete the third sentence.*

### **Amendment 16**

**Tabled by Mr Zsolt CSENGER-ZALÁN, Mr Serhii KIRAL, Lord Alexander DUNDEE, Mr Brian BINLEY, Ms Katalin CSÖBÖR, Ms Mónika BARTOS, Mr Volodymyr ARIEV, Mr**

abuse and violence. This is especially the case where domestic legal systems contain insufficient safeguards and do not effectively implement relevant international standards, including those of the 1951 Convention on the Status of Refugees. Conditions may become so intolerable that even those who had not intended doing so are constrained to move on, often forced into the hands of migrant smugglers or traffickers.

6. The European Union's influential relationship with many countries of transit, however, could also provide a basis for co-operation on a more holistic, rights-based and effective approach to migration policy. The Assembly therefore considers that the European Union should further reflect upon the aims and structure of its relations with countries of transit, ensuring that this co-operation leads to the prevention of human rights violations and does not put human rights at risk.
7. As examples of how the situation in countries experiencing significant levels of transit migration can improve, the Assembly welcomes recent developments in Turkey and Morocco. These countries are at different stages of introducing new migration policies, laws and institutions, and further developing their co-operation with international actors, notably the UNHCR and the IOM. Much needs to be done, however, in order to effectively implement legislation and policies, in full compliance with the Refugee Convention and, in the case of Turkey, the European Convention on Human Rights (ETS No. 5). The Assembly encourages both countries to continue with their respective reforms until their completion and effective implementation, which would have the potential to make both countries regional models of good practice. It also urges the international community, in particular the Council of Europe and the European Union, to reinforce their encouragement and support for this process. These countries and the European Union should refrain from agreements that could have counterproductive effects, such as a one-sided emphasis on strengthening border controls.

**Dmytro SHPENOV, Ms Barbara ROSENKRANZ**

*In the draft resolution, replace paragraph 5 with the following paragraph:*

*"The co-operation between the European Union and transit countries should provide for long-term solutions for the following problems. Large numbers of migrants may find themselves in a situation of precariousness and vulnerability in the transit countries, without legal status or protection or access to basic needs and therefore are at risk of exploitation, abuse and violence. This is especially the case where domestic legal systems contain insufficient safeguards and do not effectively implement relevant international standards, including those of the 1951 Convention on the Status of Refugees. Conditions may become so intolerable that even those who had not intended doing so are constrained to move on, often forced into the hands of migrant smugglers or traffickers."*

**Amendment 13**

(If adopted, amendment 15 falls)

**Tabled by Mr Reha DENEMEÇ, Mr Suat ÖNAL, Mr Ali ŞAHİN, Ms Tülin ERKAL KARA, Mr Ahmet Berat ÇONKAR, Mr Şaban DIŞLİ, Mr Süreyya Sadi BILGİÇ**

*In the draft resolution, replace paragraph 7 with the following paragraph:*

*"As examples of how the situation in countries experiencing significant levels of transit migration can improve, the Assembly welcomes recent developments in Turkey and Morocco. These countries are at different stages of introducing new migration policies, laws and institutions, and further developing their cooperation with international actors, notably the UNHCR and the IOM. Much needs to be done, however, in order to effectively implement legislation and policies, in full compliance with the Refugee Convention and in Morocco. The Assembly encourages Morocco to continue with necessary reforms until their completion and effective implementation, which would have the potential to make Morocco a regional model of good practice. It also urges the international community, in particular the Council of Europe and the European Union, to reinforce their*

8. By contrast, the Assembly is profoundly alarmed at the situation in Libya. The absence of a functioning State has contributed significantly to transforming Libya from a country predominantly of labour migration destination into a country of transit, especially for those seeking to reach Malta and Italy. Migrants in Libya now find themselves at risk of grave violations of their human rights and forced to confront mortal danger when attempting to cross the Mediterranean Sea, as shown by the horrendous number of deaths in recent years. Strong political and technical support for peace-building in Libya and its subsequent transition to democracy, with full respect for human rights and the rule of law, whilst necessary in itself, would also serve the interests of European migration policy. Operations to prevent migrants and refugees from leaving Libya risk putting their lives and safety in danger and constitute a breach of their human rights. Instead, the European Union should create legal channels and binding resettlement programmes for refugees.

*encouragement and support for this process. In the case of Turkey, the Law on Foreigners and International Protection are in compliance with the international standards. Turkey hosts nearly 2 million Syrians and has spent more than 6 billion US Dollars on addressing their needs. Turkey's migration management in recent years has been widely appreciated by the international community, and therefore as a country hosting the largest refugee community, it has become a global model of good practice. These countries and the European Union should refrain from agreements that could have counterproductive effects, such as a one-sided emphasis on strengthening border controls."*

**Amendment 15**

(Falls if amendment 13 is adopted)

**Tabled by Mr Zsolt CSENGER-ZALÁN, Mr Serhii KIRAL, Lord Alexander DUNDEE, Mr Brian BINLEY, Mr Ian LIDDELL-GRAINGER, Sir Roger GALE, Lady Diana ECCLES, Mr Zviad KVATCHANTIRADZE, Ms Katalin CSÖBÖR, Ms Mónika BARTOS, Mr Volodymyr ARIEV, Mr Dmytro SHPENOV, Ms Barbara ROSENKRANZ**

*In the draft resolution, paragraph 7, in the last sentence, delete the following words: "such as a one-sided emphasis on strengthening border controls".*

**Amendment 6**

**Tabled by Ms Daphné DUMERY, Lady Diana ECCLES, Mr Serhii KIRAL, Sir Roger GALE, Sir Christopher CHOPE**

*In the draft resolution, paragraph 8, delete the last sentence.*

**Amendment 2**

**Tabled by the (Former) Committee on Migration, Refugees and Displaced Persons**

*In the draft resolution, after paragraph 8, insert the following paragraph:*

*"The Assembly is also deeply concerned by the ongoing situation in the Eastern Mediterranean, Western Balkans and Central Europe. The current, incoherent EU response is having disastrous effects for refugees in transit and for Greece and other transit countries in the Western Balkans. The statement following the 23 September informal EU summit, whilst promising welcome and much-needed increases in support to countries of first asylum and transit and humanitarian agencies, focuses on keeping refugees out or at the periphery of the EU. Beyond that, however, it reveals a reluctance to accept protection responsibilities, with no mention of resettlement, and a lack of solidarity*

*in burden-sharing between states. This suggests that overall, action will remain inadequate and ineffective. The Assembly recalls that all European states are legally obliged to provide effective protection to people in need and are prohibited from sending them to countries where that protection is not guaranteed. It considers that states isolating themselves from European neighbours behind fences and strict border controls will have serious geopolitical consequences for wider European integration."*

9. Once migrants or refugees have reached the border of a European country, the authorities need to assess their protection needs on an individual basis before deciding whether or not to deny access to territory. Even outside European territory, where a national authority or the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex) has control over migrants and refugees, there is an obligation to ensure access to protection if needed. Unfortunately, this obligation is not always complied with. The Assembly is deeply concerned at continuing, credible reports of unlawful "push-back" practices and related human rights violations, despite the judgment of the European Court of Human Rights in the case of *Hirsi Jamaa v. Italy*. It is further concerned about recent legislative amendments in Spain, which the Council of Europe Commissioner for Human Rights has criticised as being "aimed at legalising push-backs of migrants arriving in Ceuta and Melilla [and] in clear breach of human rights law".
10. The Assembly recommends that the European Union:
  - 10.1. ensure coherency in overall migration policy, taking a "triangular" approach involving both countries of origin and of transit, promoting and respecting human rights and the rule of law and avoiding a narrow emphasis on border control and security. This should include measures such as:
    - 10.1.1. significant, unconditional and sustainable support to improve the protection of migrants' rights in transit countries;
    - 10.1.2. greater investment in reception and asylum-processing capacity in transit countries and promoting and supporting effective implementation of international standards such as the 1951 Refugee Convention;

**Amendment 17**

**Tabled by Mr Zsolt CSENGER-ZALÁN, Mr Serhii KIRAL, Lord Alexander DUNDEE, Mr Brian BINLEY, Mr Ian LIDDELL-GRAINGER, Sir Roger GALE, Lady Diana ECCLES, Mr Zviad KVATCHANTIRADZE, Ms Katalin CSÖBÖR, Ms Mónika BARTOS, Mr Volodymyr ARIEV, Mr Dmytro SHPENOV, Ms Barbara ROSENKRANZ**

*In the draft resolution, paragraph 10.1, replace the words "avoiding a narrow emphasis on border control and security" with the following words: "providing for a long-term, sustainable solution to the migration crisis".*

10.1.3. reconsideration of its policy of encouraging transit countries to sign readmission agreements extending to third-country nationals;

**Amendment 9**

**Tabled by Mr Brian BINLEY, Mr Serhii KIRAL, Lord Alexander DUNDEE, Sir Roger GALE, Lady Diana ECCLES, Mr Zviad KVATCHANTIRADZE**

*In the draft resolution, delete paragraph 10.1.3.*

10.1.4. increased and better targeted development aid, aimed at both economic development and good governance;

10.1.5. further development of initiatives such as the Rabat and Khartoum processes, ensuring that human rights compliance is at their core and a condition for any co-operation on border controls;

10.2. include adequate and effective resettlement and relocation policies in the Common European Asylum System, with a binding mechanism and meaningful numbers of refugees;

**Amendment 10**

(If adopted, amendment 1 falls)

**Tabled by Mr Brian BINLEY, Mr Serhii KIRAL, Lord Alexander DUNDEE, Sir Roger GALE, Lady Diana ECCLES, Mr Zviad KVATCHANTIRADZE**

*In the draft resolution, delete paragraph 10.2.*

**Amendment 1**

(Falls if amendment 10 is adopted)

**Tabled by Ms Dana VÁHALOVÁ, Ms Jana FISCHEROVÁ, Ms Gabriela PECKOVÁ, Mr Pavel HOLÍK, Mr Miroslav NENUTIL**

*In the draft resolution, in paragraph 10.2, delete the following words: "a binding mechanism and".*

**Amendment 3**

**Tabled by the (Former) Committee on Migration, Refugees and Displaced Persons**

*In the draft resolution, after paragraph 10.2, insert the following paragraph:*

*"ensure that any system of 'hotspots' for the reception and processing of asylum-seekers fully respects all relevant international standards, including those of the European Convention on Human Rights, and is subject to independent, external monitoring;"*

10.3. acknowledge responsibility for any breaches of human rights outside European Union territory and at its external borders, including push-back practices, where Frontex is involved, and ensure that they come to an end.

**Amendment 7**

(If adopted, amendment 11 falls)

**Tabled by Ms Daphné DUMERY, Lady Diana ECCLES, Mr Serhii KIRAL, Sir Roger GALE, Mr Robert WALTER**

*In the draft resolution, delete paragraph 10.3.*

**Amendment 11**

(Falls if amendment 7 is adopted)

**Tabled by Mr Brian BINLEY, Mr Serhii KIRAL, Lord Alexander DUNDEE, Sir Roger GALE,**

**Lady Diana ECCLES, Mr Zviad  
KVATCHANTIRADZE**

*In the draft resolution, replace paragraph 10.3 with the following paragraph:*

*"increase the capacity and mandate of Frontex to stop any breaches of human rights at the external borders of the European Union territory."*

11. The Assembly calls on the Council of Europe member States to:
- 11.1. ensure that they refrain from any unlawful push-backs of migrants, whether at land or sea borders or during operations outside their territory, as required by the European Convention on Human Rights;

**Amendment 4  
Tabled by the (Former) Committee on  
Migration, Refugees and Displaced Persons**

*In the draft resolution, before paragraph 11.1, insert the following paragraph:*

*"recognise that the challenge of mass arrivals of refugees and migrants is a matter of common concern and requires the formulation of effective common responses;"*

**Amendment 5  
Tabled by the (Former) Committee on  
Migration, Refugees and Displaced Persons**

*In the draft resolution, before paragraph 11.1, insert the following paragraph:*

*"not return asylum seekers to Lebanon, Jordan, Turkey, Greece, 'the former Yugoslav Republic of Macedonia', Serbia or Hungary, or any other country already bearing a disproportionate responsibility and/ or where protection is not guaranteed on account of deficiencies in reception conditions, asylum procedures or other relevant areas;"*

- 11.2. ensure that their bilateral co-operation with third countries on migration aims at promoting and ensuring compliance with human rights, and to refrain from agreements on border control if it cannot be guaranteed that the third country fully respects the human rights of migrants and refugees.

**Amendment 12  
Tabled by Mr Brian BINLEY, Mr Serhii KIRAL,  
Lord Alexander DUNDEE, Sir Roger GALE,  
Lady Diana ECCLES, Mr Zviad  
KVATCHANTIRADZE**

*In the draft resolution, paragraph 11.2, delete the following words: "; and to refrain from agreements on border control if it cannot be guaranteed that the third country fully respects the human rights of migrants and refugees".*

12. The Assembly calls on the Executive Committee of the North-South Centre, which already has a co-operation agreement with the European Commission, to consider the feasibility of further developing its role in enhancing capacities for dialogue between countries of origin, transit and destination, building on the experience of the conference organised in co-operation with the Assembly on 30 and 31 March 2015 in Lagos (Portugal). It urges the

Executive Committee to put human rights at the centre of  
this dialogue.

## B. Draft Recommendation

1. The Parliamentary Assembly refers to its Resolution ... (2015) on countries of transit: meeting new migration and asylum challenges. It recalls, in particular, that the Council of Europe co-operates with non-member States with a view to promoting human rights and emphasises that compliance with the principle of non-refoulement, reflected in Article 3 of the European Convention on Human Rights (ETS No. 5), by both member and non-member States, is of crucial importance for migrants and refugees.
2. The Council of Europe should play a role in ensuring that the externalisation by member States of their migration policy and border control to third countries does not result in violations of the human rights of migrants and refugees when they are prevented from entering Europe or returned by a European country to a third country.
3. The Assembly therefore invites the Committee of Ministers to:
  - 3.1. aim to further the human rights of migrants and refugees in its co-operation with third countries, and support these countries in promoting access to protection and basic needs and developing a comprehensive integration policy;
  - 3.2. monitor member States' compliance with the general principle underlying the Hirsi Jamaa v. Italy judgment by the European Court of Human Rights, holding countries accountable where there is evidence of push-backs practice and promoting their compliance with that principle.

### **Amendment 8**

**Tabled by Mr Brian BINLEY, Mr Serhii KIRAL,  
Lord Alexander DUNDEE, Lady Diana  
ECCLES, Mr Zviad KVATCHANTIRADZE**

*In the draft recommendation, paragraph 3.2, delete the following words: "holding countries accountable where there is evidence of push-backs practice and promoting their compliance with that principle".*