

Externalising Europe's Borders: The European Union– Tunisia Memorandum of Understanding and the Operationalisation of the 2024 New Pact on Migration and Asylum

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Abstract. The paper examines the implementation of the 2023 -2025 European Union (EU) Tunisia Memorandum of Understanding (MoU) within the external section of the 2024 New Pact on Migration and Asylum. It also talks about resolving the problem of accountability and human rights of the Pact. The migration management system of EU is gradually shifting towards external means. The Tunisia MoU demonstrates the implementation of the Pact priorities of controlling the border, accelerating the returns, and restricting the people who can move. The analysis of documents, policy reports, Non-Governmental Organization (NGO) writings, and legal documents demonstrates that money incentive, informal regulations and cooperation has transformed EU migration control into the work of the Tunisian authorities. Yet not all of these mechanisms are transparent and do not contribute to accountability, resulting in such issues as collective expulsions and the infringement of the principle of non-refoulement. Even such a big investment will not be able to alter migration flows or the impact of the MoU. This study suggests that externalization should be placed under external controls, binding guarantees, and enhanced checks to ensure that the externalization is in tandem with the EU values.

Keywords: EU–Tunisia Memorandum, 2024 new pact, migration and asylum.

1. Introduction

The asylum and migration regulation have become some of the most disputed EU policy arenas. The EU has shifted over the last 20 years away from internal harmonisation (i.e. Dublin Regulation and Common European Asylum System (CEAS)) to externalisation by delegate the task of migration management to third countries (This change is both in response to pragmatic pressures, including inconsistent arrivals and political fragmentations, and as a tactical measure to control migration before it gets to the EU territory, that is, upstream [1]. Externalisation is a mixture of monetary incentive, informal arrangements, shared practice and capacity building to limit mobility and redefine the governance of partners that provokes intricate legal and ethical challenges [2].

One of the milestones is the 2024 New Pact on Migration and Asylum. Its foreign engagements focus on preventing irregular migration and expediting returns and encouraging solidarity and responsibility by the member states [3]. Tunisia being a significant departure and transit state is at the centre of this approach. The 2023 EU Tunisia MoU shows the combination of the financial aid and capacity-building with the border control, deportation and readmission. However, the political instability, dictatorial tendencies, lack of asylum system in Tunisia makes these arrangements difficult raising issues of accountability, protection of rights, and credibility of the EU as a normative power.

The paper analyses the operationalisation of the external dimension of the New Pact by the EU MoU with Tunisia and the accountability and human-rights consequences that it has. It examines how high-level EU policy may be translated into effective governance in terms of financial leverage, informal agreements and capacity building cooperation. The selected case study is Tunisia due to its geographic location in being a major transit state, its increasing centrality in EU migration policy, and the fact that it was the first to sign a major MoU according to the New Pact. It is possible that the utilization of publicly available and secondary data will conceal certain aspects of operation, but this shortcoming will be overcome by triangulating the EU institutional documents, NGO reports, and academic sources. This would provide a more credible and empirical conception of the working of the externalisation agenda in the EU and of its broader legal and normative implications. Its qualitative document and content-analysis design is based on the analysis of the integration of the EU migration goals into the Tunisian system of governance. This method enables one to engage in a close analysis of the working of legal, financial and institutional instruments in practice.

2. Policy and literature background

This has contributed to making migration control external as one of the key features of the EU migration governance over the past two decades. It also aims at easing the internal policy impasse and also reduction on the pressure of migration across the EU boundaries through the inclusion of third countries in controlling migration [4]. The principles of externalisation are based on diplomatic, financial, legal, and operational tools that will be able to discourage irregular arrivals before the arrival in Europe. Huysmans [4] identifies the trend with the securitisation of migration of which mobility is perceived as a threat that is proactively addressed through offshore processing, pre-frontier enforcement and in partnership with non-EU states. Empirical research suggests that this model introduces the EU influence on the legal and institutional regime of countries of partners. According to Badalič, the interference of Tunisia is a form of crimmigration, which is a mixture of migration control and security policy. Pastore and Roman also focus on the opposition of the EU and domestic interests of North-Africa and show how externalisation is not merely a problem of tapping the border, but also the regulation and law beyond the EU [5,6].

The most important change in this process is the increased use of informal and soft law by the EU, in particular MoUs. In contrast with treaties, MoUs are not binding and do not use the European Parliament or national legislatures, speeding up the process of policy implementation but decreasing the democratic control. According to Brouillette, these tools promote the spread of governance standards across the borders, which enables the EU to control the policies of its partner-states without creating legal structures. Mouthaan and Nicolosi note that such informality is based on a specific desire to remain flexible and restrain local opposition, experimenting with new forms of governance [7-9]. Nevertheless, Strik and Robbesom caution that MoUs establish grey areas of responsibility in which they have duties but are not defined by law. This can be seen in the loosely

bound but non-binding nature of the Tunisia MoU which is easy to cooperate but hard to monitor and hold them accountable [4,10].

The critical writing on the issue of externalisation is dominated by accountability and human-rights considerations. Moreno-Lax builds the concept of functional jurisdiction to clarify the functioning of the EU power outside its territory in such a way as contactless control, calling into question the extraterritoriality of the EU law and its Charter of Fundamental Rights [11]. These arrangements obscure the existence of liability, as Strik and Robbesom remark, in cases where the rights of victims are violated during the EU-funded operation. According to Nicolosi, the practices circumvent measures like non-refoulement, whereas Pastore and Roman emphasise the fact that prioritising the control over rights undermine the normative legitimacy of the EU [6,9,10]. Collectively, these studies indicate that externalisation creates responsibility divide and places migrants at systematic risks of rights.

The 2024 New Pact on Migration and Asylum affirms these dynamics by institutionally embodying flexibility, solidarity and external partnerships on the EU migration law. It enhances expedited returns, broadened Eurodac data gathering, and collaboration with third nations in the name of readmission [12]. They are operationalised in the 2023/2025 EU Tunisia MoU which provides the following amounts of funding: the border monitoring (€105 million) and the budgetary support (150 million) [3]. It further defines shared efforts on the items of return, readmission, patrols, and talent agreements [13]. In this way, this MoU transfer the external aspect of the Pact to reality and demonstrates how the EU migration policy can be extended to other continents through financial incentives, cooperation mechanisms, and informal law.

3. Mechanisms, accountability, and outcomes

The EU New Pact on Migration and Asylum implementation through financial leverage, informal governance, and capacity-building cooperation can be seen in the EU-Tunisia MoU. These processes reduce Tunisia to a source of strategic collaboration in the management of externalised borders as well as revealing enduring accountability and human-rights conflicts.

3.1. Financial incentives and conditionality

Financial leverage is one of the key tools that the EU uses to promote its migration agenda. The MoU stated that it would provide Tunisia with support package of 1 billion Euro (including 105 million Euro to border management and anti-smuggling efforts and 150 million Euro direct budgetary assistance) [3]. Such distributions are contingent upon Tunisia working with the U.S. to reduce illicit departures, strengthen border patrols and migrant returns, which depicts how funding is used as an incentive and as a type of control. The Common Implementation Plan contains these commitments, which make up the EU customized partnership toolkit [3].

Similarly, the political signalling is conditional. The EU employs financial carrots to persuade Tunisia to act as a policing buffer in order to push its migration frontier further to the North African region. Tunisia, its turn, considers investing in border control to be more important than the development of asylum [14,15]. and relies on its geographic location to earn support and legitimacy. Such instrumentalisation of each other determines the implementation of Pact goals [16].

3.2. Informalisation and soft governance

Another characteristic of the MoU is that this accord has an informal characteristic of law, and this enables the migration governance to act without the bureaucratic impediments of a formal treaty. Contrary to the binding agreement, MoUs do not have to be ratified either by the European or national parliaments to allow rapid policy response but restricting oversight. They fall under a legal grey area where the commitments are unclear despite the high level of political commitment.

This informality allows the EU to avoid judicial checks and parliamentary oversight, which will decrease transparency in decision-making and spending. Aivatidis states this as a wider EU trend of soft law aimed to shun internal opposition in the quest to migrate externally [16]. Similarly, it also explains the so-called embedded conditionality, in which the goals of migration are embedded in cooperation systems without legal specification. While Rajkovic appreciates that informality gives way to flexibility, it, however, also compromises accountability and legal certainty [12].

3.3. Functional cooperation and capacity-building

The Pact has priorities operationalised in the MoU by the means of comprehensive functional cooperation and institutionalisation of EU migration goals in Tunisia. The Supply of Maritime Surveillance Systems, Patrol Vessels, Training of the Border-guards, and Cooperation in the Anti-smuggling Operations are outlined in the Implementation Report (WK 10548/24) [13]. All these activities enhance the enforcement capacity of Tunisia and makes it aligned towards EU priorities.

Capacity-building encompasses also so-called talent partnerships, which are aimed at encouraging selective legal migration and strengthening restrictive policies against irregular mobility [13]. This dual orientation indicates the exterior aspect of the New Pact [3]. However, Tunisia has failed to establish a full-fledged asylum system; it is still centered on deportation and security [17]. As Dimitriadi, EU assistance tends to strengthen established security-oriented institutions instead of sealing the loopholes of protection [15].

3.4. Alignment with pact priorities

These processes incorporate the central priorities of the Pact deterrence, returns, and externalised control, into the government of Tunisia. Monetary rewards and collaboration in the area of operations push the EU border management zone further into North Africa, turning Tunisia into a pre-frontier state, in fact [14].

This structure relates to the provisions of the Pact on pre-emptive control and accelerated returns with the help of increased Eurodac data collection [12]. A good example of selective mobility is talent partnership, which connects legal migration pathways with collaboration on returns [13]. Nevertheless, findings are still mixed: irregular arrivals do not decrease significantly, and implementation is not consistent because of domestic politics and bilateral practices by the member countries like Italy [18].

Table 1. Mechanisms of operationalisation in the EU–Tunisia MoU

Mechanism	Key Instruments	Contribution to Pact Operationalisation
Monetary Rewards and Requirement.	€1 billion, €105 m border, and 150 m budget package.	Funds the collaboration in border control and returns.
Informalisation & Soft Governance.	Non binding MoU; no parliament scrutiny.	Facilitates quick deployment of policy, but decreases control and legal responsibility.
Capacity-Building & Functional Cooperation.	Talent partnerships, smuggling, talent training, patrol boats.	Establishes EU priorities in institutions of Tunisia and capacity to enforce.
Coherence of Pact Priorities.	Intrusion into the upstream border, expedited returns, selective mobility.	Expands EU migration governance off its territory, making the goals of the Pact practical.

Table 1 describes the implementation of the New Pact on Migration and Asylum in the 20232025 EUTunisia MoU. Tunisia has been assured of cooperation with the help of financial incentives and conditionality in specific aid on border control. Soft governance and informalisation adopt the non-binding MoUs that accelerate the delivery of policies but lower the level of control. EU priorities in Tunisian organizations are entrenched through functional cooperation and capacity-building, through joint patrols, joint training, and talent partnerships. Pact alignment associates actions of the Tunisia with the EU priorities on accelerated returns and selective mobility. All in all, these processes demonstrate the way the EU externalizes migration control outside its borders, transforming the principles of Pact into working instruments and provoking the questions of responsibility and a sense of collective responsibility. EU Tunisia MoU is therefore a good indication of operationalisation of high-level policy priorities outside the EU boundaries. Nonetheless, it is also these tools that create new dangers: conditional funding may create new authoritarian instincts, informalisation leads to a lack of democratic control, and capacity-building may reinforce enforcement at the expense of protection. All these tensions are manifested in the human-rights record of Tunisia under the MoU.

3.5. Human-rights violations and non-refoulement risks

The EU Tunisia MoU is inextricably linked to the human-rights violations such as collective expulsions, arbitrary arrests and racialised violence. Mass expulsions to desert areas on the Libyan and Algerian border are documented by Amnesty International acts which violate the non-refoulement principle provided in Article 33 of the 1951 Refugee Convention [19]. According to the report issued by the International Commission of Jurists and FIDH, it is due to EU-supplied patrol boats and surveillance systems that allow these practices. The EU funding did not rely on systematic denial of asylum and arbitrary violence as confirmed by Human Rights Watch [20,21].

Children are especially vulnerable: According to PICUM, there is inadequate detention, forceful biometric-gathering, and poor guardianship systems, which is contrary to the EU and international standards of protecting children [22].

All these infractions reveal the hypocrisy of the EU which, despite publicly claiming dedication to human-rights, continues to condone abuses with fewer consequences through its externalisation policy.

3.6. Legal, institutional, and normative accountability gaps

The casual essence of EU-Tunisia MoU forms serious gaps of accountability. Being a non-binding document, it does not face the issues of parliamentary approval and judicial review, making it hard to challenge it legally [23]. It is a grey zone in the law, which enables the EU to have control without ownership [10]. Funds are non-transparent and non-independent and there are no binding human-rights assurances and audits [20,24]. According to Amnesty International, non-refoulement remains largely theoretical due to the absence of impact reviews that would be required by the EU Charter and the ECHR [25].

The EU has lost its approach as a rights-based actor due to its collaboration with Tunisia despite the abuse [4]. Human Rights Watch and Amnesty both connect border control to a loss of rights [19,21]. Strik and Robbesom advise of lost credibility, whereas Pastore and Roman consider the policy neo-colonial. All these vices together reveal severe legal and ethical inconsistencies in EU externalisation.3.7 Outcomes and Effectiveness [6,10].

Regardless of the magnitude of funding, the MoU has had low success with regard to controlling migration. Unpredictable arrivals have not reduced significantly, and implementation has been mostly led by Italy and not the EU institutions, which portrays incoherent accountability [18]. The agreement is more concerned with containment but not protection [16]. To this day, Tunisia does not have an asylum law because of the domestic interests of security and sovereignty [15]. EU aid has therefore led to de facto buffer zones without dealing with the underlying causes of migration [14].

Informal mechanisms also undermine democratic ownership by avoiding the parliamentary checks [23]. The facts indicate that the MoU promotes the external dimension of the Pact, but at the cost of clarifying the law and rights. The violation of non-refoulement, arbitrary detention and expulsions have direct connections with EU-funded operations. Despite the fact that it offers short-term containment, the deal undermines the credibility of the EU in the long term as a human-rights actor.

The EU Tunisia MoU is a good example of how financial, legal, and operational instruments can turn the New Pact on Migration and Asylum into practice outside the EU territory. But the same processes result in severe violation of rights and lack of accountability. Trade-offs between the control and values achieve success in short-term policies. To overcome these tensions, binds on human-rights principles, external control, and legislative control should be considered to balance the managerial of migration with the principles that have founded the EU.

4. Discussion and policy implications

The EU-Tunisia MoU demonstrates that there are a number of general trends in the EU external migration policy. These trends are shifting to more informal and negotiating deals, exchange of money and training as a way of influencing the policies of other countries and expanding borders beyond the EU borders. These measures will enable the 2024 New Pact on Migration and Asylum to be effective, since it introduces EU concerns of increased control of the border, increased returns, and reduced mobility into governmental institutions in Tunisia [26]. Nevertheless, these measures also introduce the gaps in accountability, ambiguous legislation, and the threats to human rights, which leaves the EU rating as the source of moral guidance questionable.

One such basic contradiction is the normative legitimacy versus operational effectiveness trade-off that is brought out by the Tunisia case. Funding and cooperation are an informal MoU that enables the EU to get things done within a short period and have a third country that is willing to cooperate without necessarily ratifying it [16]. They have widened the EU border zone to include

North Africa and relieved the irregular migration pressure in the short run. However, they also violate democratic checks and balances, blur the law, and condone such practices as collective expulsions and arbitrary arrest, which infractions of non-refoulement and fundamental rights [19,20].

This is one more sign of a broader trend of externalisation: protection and responsibility are often put into the shadow of control and containment. The process of putting the implementation on the states where the law systems are weak exposes the EU less directly, but associates it with the violations [10]. Absence of adequate judicial oversight and parliamentary examination may paralyze the EU dedication to the rule of law and human rights and accuses are charged with hypocrisy in the world organizations [6, 23].

The case of externalisation limits is also exhibited in Tunisia. Despite this heavy investment, the sporadic arrivals have not been decreased drastically, and the cooperation has been limited, and in the majority of the instances, the cooperation has been inspired by such member states as Italy [18]. Tunisia is countering to improve the sovereignty and border control instead of asylum building [15]. This proves that externalisation is merely a short-term measure and not long-term reform that leaves the EU to the vagaries of unstable alliances, reputational risks.

Change is needed: the new deals have to be institutionalised (parliamentary ratification), the judicial reviewed, and the legally correct. Close monitoring, enforcing human-rights provisions and compulsory impact assessment are to be included. The answer to restoring legitimacy is increased control at both EU and national level. EU Tunisia MoU is a prototype and a lesson: efficiency must be coupled with responsibility and protection of rights to ensure migration policy is in line with the overriding values of the EU.

5. Conclusion

This paper examined how the external dimension of the 2024 New Pact on Migration and Asylum is executed with the help of the EU Tunisia MoU and the question of accountability and human-right issues that issue raises. It proves that monetary gains, non-legal agreements, and capacity-building provide a broader range of control over EU migration, but at the same time create gaps in law. The informal tools are not subject to parliamentary control and legal examination, compromising accountability and creating an opportunity to obtain rights violations (including collective expulsions, arbitrary arrest, and non-refoulement violations). These findings tarnish the EU as a human-rights actor. Even high financing and the partnership are not sufficient to make the MoU an effective tool: the irregular arrivals are not decreased, the asylum system in Tunisia is inefficient, and the domestic policies determine the situation rather than the EU goals. In the example of Tunisia, there is an example of trade-off to short-term control at the cost of right and legal clarity protection. The new partnerships are supposed to have binding rights, more supervision, and control so as to make sure that the effectiveness is within the EU values.

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