

The Tunisian Red Flag: Lessons from the EU-Tunisia Strategic Partnership for the External Dimension of EU Asylum Policy

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Executive Summary

What Is the Matter?

In July 2023, the EU and Tunisia signed a Memorandum of Understanding (MoU) on a Strategic Partnership – among other objectives, to limit irregular migration, better coordinate search and rescue, and increase migrants’ return. Although the promises to provide Tunisia with stronger financial support are substantial, most of the MoU’s points on migration are not new. The MoU signals the end of ten years of EU efforts to support the development of a (formal) Tunisian asylum system, but makes no mention of how to improve the situation of asylum seekers and refugees within the current (informal) arrangements. Together with high-level reform proposals for EU asylum law, the partnership will leave Tunisia even less interested in improving the situation. The partnership trades longer-term interests and commitments on refugee protection in the EU’s neighborhood for short-term interests brokered by a sub-group. It should serve as a red flag, not a blueprint.

What Should Be Done?

Past EU attempts to develop the Tunisian asylum system have backfired precisely because Tunisia has sought to avoid being at the receiving end of EU externalization efforts. Tunisia’s case shows that the EU must urgently revise its approach to salvage common interests and commitments on building refugee protection beyond its own territory.

1. The MoU implementation meetings should outline actions to improve the situation at land borders and the reception of migrants and refugees without a formal asylum system, with a particular emphasis on civil society efforts.
2. Legal migration needs to be promoted under the Partnership. Alongside such promotion efforts, the EU should not give up the medium-term goal of legislative change on asylum in Tunisia.
3. The Procedures Regulation should consider the impact on the external dimension by detailing what is effective protection in “Safe Third Countries”, and by conferring responsibility on EU institutions to designate states as such “Safe Third Countries.”
4. Future agreements should refer to shared policy ambitions under the Global Compact on Refugees and outline how parties will develop refugee protection.
5. Policy processes in future agreements should be more formalized so as to assess political risks across the spectrum of migration policy and on objectives of EU external action.

Introduction

On July 16, 2023, the EU and Tunisia signed a Memorandum of Understanding (MoU) on a new Strategic Partnership,¹ brokered under the “Team Europe” approach by EU Commission President Ursula von der Leyen, Dutch Prime Minister Mark Rutte, and Italian Prime Minister Giorgia Meloni.² While the partnership spans numerous areas, irregular migration is the central theme for EU partners.

How will the Strategic Partnership affect asylum in Tunisia? The following analysis builds on qualitative research conducted for ASILE to answer this question.³ The question has reverberations far beyond Tunisia. In July, EU Commission President von der Leyen said the agreement should serve as “a template, (...) a blueprint for the future, for partnerships with other countries in the region,”⁴ and reiterated the statement in her September 2023 State of the Union address.⁵ What is more, Tunisia is a test case for the external dimension of EU asylum policy, as developing the asylum system in third states remains a declared aim of the EU’s pact on migration and asylum.

EU-Tunisia Migration Cooperation and the 2023 Strategic Partnership

Tunisia has emerged as an EU priority country for border management. Although the country is increasingly difficult to leave irregularly given detentions and pushbacks to the Algerian or Libyan land borders,⁶ Tunisia remains an important transit hub to the EU. Between January and June 2023, 34,000 people successfully crossed via boat from Tunisia to Italy.⁷

Accordingly, while the new Strategic Partnership of July 2023 spans numerous areas, irregular migration has been the central theme for EU partners. Under the Partnership’s MoU, the parties agree to boost border controls, combat migrant smugglers and improve coordination on search and rescue at sea. The parties seek to develop a “system for the identification and return of irregular migrants” from Tunisia and “support the return and readmission” as well as the socio-economic reintegration of Tunisians living irregularly in the EU. Finally, they seek to promote development in areas of Tunisia from which there is “high migratory potential” as well as to foster a “Talent Partnership to promote legal migration, in their common interest.”

The agreement has a significant price tag for the EU, which commits to provide both financial and technical support for border management. While the MoU does not

1 European Commission (July 16, 2023). “Memorandum of Understanding on a strategic and global partnership between the European Union and Tunisia.”

2 European Commission (no date). “Team Europe Initiatives.”

3 This includes a document review and unattributed interviews with key informants. Dimitriadi, A. (2022). “Migration and asylum in Tunisia: Domestic interests, external influences, and policy outcomes.” ASILE.

4 European Commission (July 23, 2023). “Speech by President von der Leyen at the International Conference on Development and Migration.”

5 EU Commission (September 13, 2023). 2023 State of the Union Address by President von der Leyen.

6 Global Detention Project (2021). “Tunisia.”

7 UNHCR (June 2023). “Italy Sea Arrivals Dashboard.”

specify a sum, earlier EU Commission statements mentioned up to €900 million in macro-financial aid and up to €150 million in budget support.⁸ The agreement is widely interpreted as the EU funding Tunisia to limit migrant movement to the EU.

The MoU broadly reflects the EU and Tunisia’s past priorities for cooperation on migration, which has intensified alongside collaboration in other policy areas since the beginning of armed conflict in Libya in 2014. Concerns over a potential spill-over of the conflict to Tunisia, border crossings by jihadist extremists, and the need to support the only democratic regime to emerge from the Arab Spring all facilitated an intensification of the EU-Tunisia relationship. A Privileged Partnership was concluded in 2012 and an action plan covering the period from 2013 to 2017 was adopted.⁹ In parallel, a Mobility Partnership was established in 2014.¹⁰ The relationship between the EU and Tunisia reached a new milestone when EU funding “doubled to a total of €445m in the period 2011–2013, half of which was allocated to supporting the consolidation of democracy and economic stabilisation, with security, civil society, economic integration and mobility as additional priorities.”¹¹

Cooperation has clearly emphasized border management and return, but it has also encompassed the protection of asylum seekers and refugees. For example, the 2013 to 2017 action plan addressed protection and the EU invested financially and technically in training, capacity-building, refugee status, reception facilities, and cash assistance to refugees. Initial progress on the asylum system was closely linked to the EU’s targeted support for democratization. Tunisia’s 2014 reform of the constitution included guarantees for political asylum and *non-refoulement*. This coincided with reforms to human rights law, strengthening civil society, and a draft national asylum law and migration strategy.

The 2023 MoU signals the end of ten years’ worth of EU support to develop a Tunisian asylum system. The MoU makes no allusion to asylum, protection or even reception. Instead, “Tunisia reiterates its position that it is not a country of settlement for irregular migrants,” a term that has previously been extended to asylum seekers, too.

No Progress on Tunisia’s Asylum System

The MoU’s silence on asylum corresponds with an entrenched political standstill, informal arrangements, and unmet needs. Tunisia is a party to the 1951 Refugee Convention and the 1969 AU Refugee Convention, and it has enshrined the right to asylum in the 2014 Constitution, governed by a dedicated law. However, the asylum law has been pending in parliament since 2014, meaning that Tunisia does not yet have a national asylum system. Instead, asylum and reception remains largely “outsourced” to the UN High Commissioner for Refugees (UNHCR) – with whom Tunisia has entertained agreements since 1992 – and civil society organizations.

8 Hayden, J. (16 July 2023). “EU finalizes migrant deal with Tunisia.” *Politico*.

9 Raach, F., Sha’ath, H., and Spijkerboer, T. (2022). “WP5 – Tunisia Country Report.” ASILE.

10 Ibid, pp. 23-24.

11 Narbone, L. (2020). “The EU-Tunisian relationship after 2011: Resilience, contestation and the return of the neglected socio-economic question.” Middle East Directions Research Project Report 2020/18. European University Institute.

Access to territory remains challenging. For example, Tunisia has been condemned for collective expulsions on the border with Libya.¹² Capacities for Search and Rescue (SAR) at sea are insufficient, despite efforts to modernize the National Guard's maritime fleet. There is no formal protective framework for people who have disembarked, making them dependent on individual officers tolerating their stay. Detention is frequent for people apprehended at the border on entry and for those intercepted on departure.

Once registered as an asylum seeker, people are legally allowed to stay for 60 days in reception centers set up by the (underfunded) UNHCR and its local partners. Capacities and services, however, are insufficient, and documentation is inadequate.

A screening and referral process exists for people who wish to apply for international protection. UNHCR processes asylum applications, in cooperation with the Tunisian Council for Refugees, but refugee status assessments take between several months and a year due to limited staff. No national framework on integration exists for people recognized as refugees. Financial support is extremely limited and access to employment and basic services, including education and housing, is difficult. Meanwhile, Tunisia is not prioritized by (Western) asylum countries for resettlement, given the very few places available worldwide.

The state of the asylum system means that many potential asylum seekers opt out of the system: for example, registrations with UNHCR (presently some 9,000 people) are low compared with the overall estimated migrant presence. Considering the absence of a national asylum system, border controls end up directly and indirectly restricting and containing all non-nationals in a country unable and unwilling to care for them.

Explaining Tunisia's Policy Decisions on Asylum

Tunisia's current state of asylum affairs is widely seen to result from deliberate policy, albeit with important framework conditions set by the EU. A central theme for Tunisia – reflected in the MoU – is its unwillingness to serve as a (formal) host state.

The absence of a law on asylum and of a state-run asylum system has allowed Tunisia to cooperate with the EU while rejecting frequently proposed ideas about a greater role in handling asylum applications for the EU. As early as 2017, Tunisia had rejected EU proposals for disembarkation centers on its territory, with Tunisian Foreign Minister Khemaies Jhinaoui stating, “Tunisia will not accept to be pushed to address issues that do not concern it.”¹³ Indeed, although asylum was normally hardly present in the public debate, the EU plans at the time stirred public controversy. Most recently, the focus on migration cooperation has again offered an opportunity to the Tunisian government to exploit the subject for political gain, at a time where the

¹² Global Detention Project (2021).

¹³ Abderrahim, T. and Knoll, A. (2017). “EU-Tunisia cooperation on migration: Conflicting agendas?” ECDPM Talking Points blog.

socio-economic situation in Tunisia is dire.¹⁴ As Natter observes, “Europe’s relentless attempts at securing cooperation on migration control have [...] progressively turned immigration from a non-topic in Tunisia into a foreign policy asset and [...] a nationalist-populist policy tool.”¹⁵

Research on Tunisia has consistently observed that EU efforts to support the development of an asylum system have produced the opposite result.¹⁶ While the lack of progress on asylum legislation is partly explained by the current legal backlog before the National Assembly,¹⁷ it is widely perceived as a response to the EU’s push for legal reforms on migration since 2014. As one interview partner put it: “It is not accidental; Tunisia stopped moving forward with reforms as soon as the EU started pressuring Tunisia.” The funding offered for asylum is politically associated with efforts to contain asylum seekers in Tunisia and prevent their journey across the Mediterranean.¹⁸

Tunisia’s reluctance to take formal responsibility for asylum is evident in the government’s initial unwillingness to address the dire reception conditions in the main reception centers, particularly the Medenine and Zarzis shelters. In Zarzis, demonstrations by people from the center occurred in early 2022, denouncing substandard conditions. One interviewee noted that the situation in Zarzis was framed by the Tunisian government as a “European problem,” with the Ministry of Social Affairs – which retains the portfolio for the integration of refugees and asylum seekers – conspicuously absent. This resulted in a misrepresentation of the situation, with UNHCR and the EU being “blamed” for a Tunisian structural problem. More recently, president Saied held a speech in which he alleged that the reception of sub-Saharan migrants was part of a “criminal plan” to change the ethnic makeup of Tunisia, offsetting racist protest.¹⁹

Reluctance to invest in developing the asylum system contrasts with search and rescue at sea, where a domestic political will to cooperate and invest is apparent. The fact that Tunisians also embark on the sea journeys creates additional responsibility for the state vis-à-vis the EU.

Beyond asylum and search and rescue, other examples of EU-Tunisia cooperation on migration also demonstrate that Tunisia has pragmatically selected and informally implemented aspects that concern its core interests while rejecting others. This is particularly true of border management, which has absorbed the bulk of financial assistance and is a shared priority for the EU and Tunisia. Tunisia has repeatedly rejected cooperation with Frontex on border management but has been willing to acquire maritime border surveillance systems. Frontex would like to shift the focus to

14 Natter, K. (2023). “Reinventing a Broken Wheel – What the EU-Tunisia Deal Reveals over Europe’s Migration Cooperation”. *Verfassungsblog*.

15 Ibid.

16 E.g., Abderrahim, T., Fakhry, A. and Rietig, V. (2021). “Walking a Tightrope in Tunisia - The Aspirations and Limitations of Migration Policy Reform.” DGAP.

17 Roman, E. and Pastore, F. (2018). “Analysing Migration Policy Frames of Tunisian Civil Society Organizations: How Do They Evaluate EU Migration Policies?” Working Paper 14. MEDRESET; Natter, K. (2021). “Ad-hocratic Immigration Governance: How States Secure Their Power over Immigration through Intentional Ambiguity.” *Territory, Politics, Governance*.

18 Raach, F., Sha’ath, H., and Spijkerboer, T. (2022). p. 10.

19 Natter, K (2023), citing Blaise, L., *Le Monde*. “Tunisia’s President Saied claims sub-Saharan migrants threaten country’s identity.”

border policies specifically for migration, whereas border management priorities are currently oriented toward traditional security concerns. The Frontex 2021 action plan notes that “no direct border-related activities have been carried out in Tunisia due to Tunisian authorities’ reluctance to cooperate with Frontex.”

What’s the Future for Asylum in the Implementation of the Strategic Partnership?

From the Tunisian side, the EU-Tunisia cooperation on migration has been marked by selective cooperation and a preference for informal implementation over formal legal frameworks. The EU has effectively succumbed to this approach in the 2023 Strategic Partnership, including with respect to asylum: the MoU makes no reference to any form of Tunisian national responsibility for refugee protection.

The Strategic Partnership comes at a time when the EU Justice and Home Affairs Council has agreed to reform the EU’s own asylum system, with a potentially important fall-out for third countries. The Council agreement foresees Member States increasingly using an inadmissibility procedure for people deemed able to receive protection in another country outside the EU (the “Safe Third Country” concept). The criteria for a non-EU country to be considered a “Safe Third Country” have been considerably lowered: individual states may declare a non-EU country safe and apply the concept to people who have merely transited the country in question. For these points to become law, the European Parliament must still agree to them. However, this is expected without major changes.

Judging from past policy considerations in Tunisia and the recent domestic political exploitation of migration, the combined effect of the MoU and the reform of the “Safe Third Country” concept will mean Tunisia has even less incentive to advance legal reform and develop its asylum system. Instead, it has every reason to continue a strategy of “outsourcing” and informality.²⁰ Remarkably, besides coordination on search and rescue, the MoU and Strategic Partnership contain no ambition to improve the situation for asylum seekers and refugees, even within a current system run not by the government, but by UNHCR and civil society. It is also weakening the situation of Tunisian civil society organizations which have been engaged on these issues for years, including by demanding legal reform.

Tunisia’s readiness to act on commitments to increased border control will determine the extent to which the Strategic Partnership will increase pullbacks at sea – which would further pressure current reception arrangements – and pushbacks on land. The fact that Tunisians attempt border crossings to the EU alongside other nationals – Tunisians are among the top three nationals who irregularly embark in Tunisia – adds some complexity, as domestic interest in curbing the movement of Tunisians is limited. Only substantively more legal pathways for them could change this.

In the current circumstances, prospects for better protection in Tunisia are grim. The EU’s actions not only contrast with its commitments to the Global Compact on Refugees to strengthen the sharing of responsibility on refugee protection among a wide

20 This argument has also been advanced in respect of other policy areas on migration, including labor migration. See Rouland, B. (2021) “Redistributing EU ‘burdens’: The Tunisian perspective on the new Pact on Migration and Asylum.” ASILE.

array of actors and countries; “Team Europe” has also placed the Strategic Partnership at odds with a declared aim of the EU’s pact on migration and asylum.²¹ As succinctly put by the European Council on Refugees and Exiles: “The risk of Team Europe as demonstrated by the events in Tunisia is that the EU becomes a tool for Member States’ interests and the objectives of EU external action are ignored or eclipsed [...] It’s all a long way from Article 21 (Treaty on EU).”²²

Conclusions and Recommendations

In the cooperation between Tunisia and the EU on migration, asylum has been the single most contentious issue. EU efforts to support the development of a (formal) asylum system have yielded no results. Tunisia still has no national asylum system. This is mostly because the current situation allows it to reject the EU’s externalization agenda and migration of non-Tunisians is exploited for domestic policy gains.

The MoU signals the end of the EU’s ambition to develop a national asylum system in Tunisia. It does so almost at the exact moment the EU seems likely to significantly weaken its legal standards on “Safe Third Countries.” Tunisia will have even less domestic interest to improve the protection situation for asylum seekers and refugees. The MoU weakens the position of domestic civil society and trades common, longer-term interests and commitments on refugee protection in the EU neighborhood for short-term interests brokered by a subgroup. It should serve as a red flag, not as a blueprint.

Tunisia’s case shows that the EU must urgently revise its approach to salvage common interests and commitments on building refugee protection beyond its own territory. It should consider the following for the implementation of the strategic partnerships, as well as for future agreements with other countries:

1. The EU Commission and the EU External Action Service should use the first MoU implementation meetings in late 2023 to outline actions to improve the situation at land borders and the reception of migrants and refugees without a formal asylum system. One such action could be better support of Tunisian civil society actors (who not only have a key role in reception, but should also be the most important actors in pushing for legal change) and UNHCR. Another action can be resettlement, signalling to Tunisia support without the risk of externalization.
2. The promotion of legal migration remains vague in the partnership, even though this aspect is domestically most important to Tunisia. The EU should put particular emphasis on promoting regular migration under the partnership. Alongside such efforts, however, it should not give up the medium-term goal of legislative change on asylum in Tunisia.

21 Pichon, E. (2021) “The external dimension of the new pact on migration and asylum: A focus on prevention and readmission.” European Parliamentary Research Service Briefing.

22 Woollard, C. (July 26, 2023) “Editorial: The EU’s Dodgy Deal with Tunisia is a Classic of the Genre: Undemocratic, Unlawful and Unlikely to Work.” ECRE Weekly Bulletin.

3. In the final negotiations between the European Parliament and the Council on the new Procedures Regulation, the external dimension, particularly the adverse incentives for third countries, should be considered, alongside the following:
 - The Regulation should detail what is effective protection in “Safe Third Countries,” considering reception, access to asylum procedures, quality of asylum procedures and legal review, and quality of protection granted.
 - EU institutions – not individual Member States – should have responsibility to assess whether a third state can be considered a “Safe Third Country.”
4. Future agreements should refer to shared policy ambitions under the Global Compact on Refugees and outline how parties will jointly develop refugee protection.
5. Policy processes on future agreements should be more formalized, involving Member States and the European Parliament, so as to more thoroughly assess political risks across the spectrum of migration policy.



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