

Reply of the European Commission to the questions from the European Ombudsman - Strategic initiative SI/5/2023/MHZ on how the European Commission intends to guarantee respect for human rights in the context of the EU-Tunisia Memorandum of Understanding

THE QUESTIONS ASKED BY THE EUROPEAN OMBUDSMAN

The strategic initiative was opened by the European Ombudsman on 13 September 2023.

The European Ombudsman's strategic inquiry SI/5/2023/MHZ asked the following questions:

- 1) Did the Commission carry out a human rights impact assessment (HRIA) of the MoU before its conclusion and consider possible measures to mitigate risks of human rights violations, notably in the context of the envisaged 'Migration and mobility' actions? If yes, could the Commission make this impact assessment public, along with the mitigating measures? If not, please set out the rationale for this.
- 2) Does the Commission intend to carry out a periodic, systematic and effective HRIA of actions undertaken in the course of the implementation of the MoU? If so, could the Commission please provide details as to how it intends to ensure this will be done in a transparent and inclusive manner? If not, please set out the rationale for this.
- 3) According to Regulation (EU) 2021/947 of the European Parliament and of the Council establishing the Neighbourhood, Development and International Cooperation Instrument – Global Europe, EU funding under the Instrument shall not support actions or measures, which may result in violations of human rights in partner countries. How does the Commission plan to ensure that actions undertaken by Tunisia under the Migration and mobility pillar of the MoU and financed using EU funds will comply with the applicable human rights standards? Has the Commission defined criteria for the potential suspension of funds due to non-respect for human rights?

THE REPLIES OF THE EUROPEAN COMMISSION

General:

The objective of the Memorandum of Understanding (MoU) on a strategic and global partnership between the European Union and Tunisia, signed on 16 July 2023, is to strengthen the EU comprehensive cooperation with Tunisia to tackle a number of joint challenges and seize opportunities in specific sectors including macro-economic stability, economy and trade, green energy transition, people-to-people contacts as well as migration management.

Against this background, the Commission would like to provide the following information in response to the questions raised by the European Ombudsman [concerning the pillar “Migration and mobility”].

1) Did the Commission carry out a human rights impact assessment (HRIA) of the MoU before its conclusion and consider possible measures to mitigate risks of human rights violations, notably in the context of the envisaged ‘Migration and mobility’ actions? If yes, could the Commission make this impact assessment public, along with the mitigating measures? If not, please set out the rationale for this.

The respect and the protection of human rights and fundamental freedoms are at the core of the EU’s partnership with Tunisia and enshrined in the Association Agreement between the EU and Tunisia¹ (Article 2), which is the overarching legal framework for the bilateral relations. The EU seeks to hold an Association Council in the coming months to endorse the new Partnership Priorities and to address all aspects pertaining to the EU-Tunisia partnership including fundamental values (human rights, democracy and rule of law) and the implementation of the five MoU pillars. In this context, the new EU-Tunisia Partnership Priorities which are currently discussed in the Maghreb-Mashreq Council Working Group, led by the European External Action Service and to which the Commission takes part, provides for strong commitments on fundamental values in the second chapter of the text “La promotion d’un espace commun de valeurs (droits humains, démocratie, bonne gouvernance et Etat de droit)”. A clear reference to the respect for human rights and international law is also embedded in the migration pillar of the MoU².

Human rights are substantially addressed in EU cooperation with Tunisia, be it under financing from the annual ENI and now NDICI Tunisia envelope or under thematic programmes such as EIDHR (now Human rights and Democracy) and the Civil Society Organisations (CSO) line.

The Commission has an **ongoing portfolio of programmes on human rights and democracy worth EUR 35 million**, in particular for CSOs working on democracy and youth

¹ Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Tunisia, of the other part of 1998, entered into force in 2005 and revised in 2013,

Article 2 “Relations between the Parties, as well as all the provisions of the Agreement itself, shall be based on respect for human rights and democratic principles which guide their domestic and international policies and constitute an essential element of the Agreement.”.

See also Article 69(3)(b)(c) according to which issues of migration and illegal migration is to be included in the dialogue on social matters:

“Dialogue shall cover in particular all issues connected with:

(a) the living and working conditions of the migrant communities;

(b) migration;

(c) illegal immigration and the conditions governing the return of individuals who are in breach of the legislation dealing with the right to stay and the right of establishment in their host countries”;

² “This approach shall be based on respect for human rights and shall include combating criminal networks of migrant smugglers and human traffickers (...)” “Both Parties agree .. in accordance with international law”, Memorandum of Understanding on a strategic and global partnership between the European Union and Tunisia, 16 July 2023.

participation. For instance, the key EU programme in favour of civil society in Tunisia which started in 2021 “*Reinforcement of emerging civil society organisations*” (EUR 8.2 million) is working very well and supports 60 CSOs.

Also, a regular tripartite Government/EU/CSO dialogue has taken place since 2012 and CSOs are always consulted ahead of the thematic subcommittees held every year as part of the EU-Tunisia Association Agreement. Finally, the Delegation of the European Union in Tunisia together with EU Member states, developed a roadmap for the structured work with civil society, following broad consultations with CSOs. This new framework provides for an efficient platform for dialogue and cooperation, including on human rights matters.

Country-specific human rights reports are included in the “EU Annual Report on Human Rights and Democracy in the World” (latest Annual Report 2022 was published on 31 July 2023³). The Delegation of the European Union in Tunisia is also monitoring the situation through periodic mission and meetings with all relevant stakeholders. These regular assessments are taken into consideration and form the basis for all negotiations, such as the one on the MoU, and guide the implementation of all actions that follow.

A human rights impact assessment (HRIA) is not required for the MoU itself, as the latter is a non-binding instrument recording an understanding of shared objectives, including in the area of migration, without giving rise to obligations that are legally binding. In the field of migration, the MoU identifies the priorities of combating irregular migration, combating criminal networks of migrant smugglers and human traffickers, effectively managing borders, developing a system for the identification and return of irregular migrants already present in Tunisia to their countries of origin, further supporting the return and readmission from the EU of Tunisian nationals in an irregular situation in respect of international law and the rights and dignity of these individuals, including socio-economic reintegration in Tunisia, promoting legal pathways for migration, stimulating international mobility at all skills levels and strengthening cooperation on skills development in a mutually beneficial manner, as well as implementing a Talent Partnership.

- 2) Does the Commission intend to carry out a periodic, systematic and effective HRIA of actions undertaken in the course of the implementation of the MoU? If so, could the Commission please provide details as to how it intends to ensure this will be done in a transparent and inclusive manner? If not, please set out the rationale for this.***

All EU projects financed by the EU budget must fulfil conditions and objectives with regard to environmental and labour standards and include human rights clauses⁴ by which the beneficiary is obliged to implement programmes in accordance with human rights obligations.

³ [EU Annual Reports on Human Rights and Democracy | EEAS \(europa.eu\)](#)

⁴ Par. 2.9 in the General conditions of Contribution Agreements: “The Organisation shall promote the respect of human rights and respect applicable environmental legislation including multilateral environmental agreements, as well as internationally agreed core labour standards.”

To ensure the efficiency of EU spending and compliance with the above-mentioned principles, the European Commission monitors its programmes through regular reports from implementing partners, external evaluation, verification missions and specific results-oriented monitoring exercises. Monitoring reports allow relevant stakeholders to ensure the efficiency and effectiveness of actions and develop lessons learned.

In addition, the Commission has a robust independent monitoring system for migration-related programmes implemented in Libya, and which will be set up for Tunisia in 2024 as well, as part of an oversight mechanism to effectively monitor and gain regular feedbacks on the implementation of contracts, including do-no-harm and human rights compliance assessments.

The guiding principles of all migration programmes is the full respect of human rights in accordance with the EU treaties, the Charter of Fundamental Rights of the European Union and the EU Financial Regulations. For example, the programme “Support search and rescue operations at sea in Tunisia” (see NDICI-GEO-NEAR/2022/437-469) includes activities to enhance effective and human rights compliant implementation of SAR operations at sea, based on the 1979 Convention on Maritime Search and Rescue (SAR Convention). The aim is to organize the duty of rescue at sea according to Art. 98 of the UN Convention on the Law of the Sea between states as comprehensively and effectively as possible. Another example in the field of migration-related programmes is the ongoing support to mainstream the obligation to promote, respect and protect human rights of individuals at the border into the training curricula for the coast guards (see NDICI-GEO-NEAR/2022/ 436-525, BMP Maghreb). This will help improving compliance with human rights obligations relating to international law, the European Human Rights Convention and those rights enshrined in further European and national legislation, such as the principles of non-discrimination and provision of effective assistance and protection from harm.

3) According to Regulation (EU) 2021/947 of the European Parliament and of the Council establishing the Neighbourhood, Development and International Cooperation Instrument – Global Europe, EU funding under the Instrument shall not support actions or measures, which may result in violations of human rights in partner countries. How does the Commission plan to ensure that actions undertaken by Tunisia under the Migration and mobility pillar of the MoU and financed using EU funds will comply with the applicable human rights standards? Has the Commission defined criteria for the potential suspension of funds due to non-respect for human rights?

In the area of migration, the European Commission cooperates with several specialised international organisations, including UN agencies, such as the United Nations Refugee Agency (UNHCR) and the International Organization for Migration (IOM), with implementing organisations from Member States and with NGOs and civil society organizations. Most implementing partners are pillar-assessed entities (meaning their internal rules and procedures are screened to guarantee a high level of protection of EU funds, equivalent to the one provided by the EU’s Financial Regulation. This pillar-assessment is conducted by

independent auditors). All implementing partners in the area of migration have a proven track record and highly specialised technical expertise not only in the relevant sector but also on monitoring and evaluation.

Implementing partners provide comprehensive and frequent monitoring and analysis of changing contexts in which they operate in the country and on the situation on human rights. Stakeholder analysis and conflict sensitivity analysis have been and will continue to be conducted by implementing partners of migration programmes in Tunisia as well.

The human rights clauses in all Contribution Agreements with implementing partners allow the Commission to take measures in case of non-compliance and adjust implementation as necessary.

In general, the criteria for the suspension of a contract follows Art. 11 of the General conditions to a Contribution Agreement:

“11.6 The Contracting Authority may also notify the Organisation of the suspension of the implementation of the Agreement if exceptional circumstances so require, in particular:

a) when a relevant EU Decision identifying a violation of human rights has been adopted;
or

b) in cases such as crisis entailing a change of EU policy

CONCLUSION

The Commission will continue to monitor the respect for human rights through its financing cooperation in Tunisia through the applicable rules and procedures under the NDICI-Global instrument and other EU rules.

*For the Commission
Olivér VÁRHELYI
Member of the Commission*

