Inputs: Contribution to the report on externalization by the UNSR on the human rights of migrants

EuroMed Rights

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1. Examples of externalization measures

EuroMed Rights has been closely monitoring the EU's externalization of migration policies in the MENA region. Recent developments increase the likelihood that individuals will be fast-tracked through the EU asylum system and deported to countries with poor HR records without meaningful protection and safeguards.

2024 Pact on Migration and Asylum: The Pact increases Member States' capacity to detain asylum seekers at borders with no exemption for families with children, promotes accelerated border procedures, through the 'legal fiction of non-entry', and allows for deportation to third countries on the basis of a widely-defined connection. Overall, the Pact reduces procedural safeguards and increases the risk of arbitrary detention and refoulement.

2025 Return Framework Revision: The proposed Return Regulation replaces the 2008 Return Directive and significantly broadens the notion of "country of return" to include any country of residence, transit, or with an agreement or arrangement, regardless of individuals meaningful and personal ties to them. Key features include the introduction of vaguely defined "return hubs", the expansion of detention grounds and entry bans. Non-refoulement safeguards remain vague, and enforcement relies heavily on bilateral deals, giving Member States broad discretion.

Safe Third Country and Safe Country of Origin Concepts: Amendments to the Pact revise the "safe third country" concept, proposed by the European Commission on May 20, and propose a European list of "safe countries of origin." Nationals from "safe" countries face fast-tracked asylum procedures, often at border or transit zones, leading to limited procedural safeguards and a higher burden of proof on applicants to rebut the presumption of safety. In such a context, many may receive a return order without having undergone a full and fair individual assessment of their protection needs. The list includes Tunisia, Morocco, Egypt, and Turkey — countries with well-documented rights abuses and limited protections for both their own citizens and migrants. The proposed reform of the "safe third country" concept removes the mandatory requirement for applicants to have a meaningful connection with the safe third county, allowing for the concept to be applied if there is an agreement obliging the third countries to assess asylum claims. Where national law does require a connection, mere transit is considered sufficient.

Bilateral Agreements in the MENA Region: Since 2015, the EU has intensified its cooperation with countries in the Southern Neighbourhood, through bilateral agreements that externalize migration control. Often negotiated by EU executives or Member States without parliamentary input, these deals

often tie aid and financial support to readmission, border control, and returns, while undermining democratic oversight and HR.

2016 EU-Turkey Agreement: The 2016 EU-Turkey agreement marked a cornerstone of EU externalization policy, committing over €11 billion in financial support to Turkey that bolstered Turkish migration control infrastructure. Investigations have documented grave abuses in EU-funded centers, including arbitrary detention, torture, forced deportations to unsafe countries, and denial of legal aid – flagrant violations of international law, notably the principle of non-refoulement.

2017 Italy-Libya Memorandum of Understanding (Mou): Backed by EU financial and logistical support, this MoU established a partnership with the Libyan Coast Guard to intercept migrants in the central Mediterranean. Thousands have been intercepted at sea and forcibly returned to Libya, where they face inhumane detention, torture, and extortion. EU funding has enabled the training, equipping, and coordination of Libyan forces, despite ongoing documentation of systematic abuses.

2023 EU-Tunisia MoU: The agreement includes €105 million to support Tunisian border control and returns. Signed without parliamentary scrutiny, it followed President Kais Saied's racist speech and surge in racist violence against Sub-Saharan migrants and civil society. The agreement has empowered pushbacks and violent expulsions to desert zones without due process, raising concerns also from UN experts.

Morocco Cooperation: The EU longstanding partnership with Morocco was reinforced with a new cooperation program in 2023 that allocates 152 million to strengthen Morocco's border management. Investigative reports show EU-backed operations forcibly displaced migrants to remote desert areas, including pregnant women and children. Morocco lacks an asylum law and criminalizes migration, yet EU funding continues.

Egypt Strategic Partnership: While not bound by a formal migration pact, Egypt receives EU financial support for migration control under broader cooperation. Migrants and refugees – particularly from Sudan and Eritrea – face abuse, mass deportation, and detention in inhumane conditions. Egypt's recent asylum law falls short of international standards and has been widely criticized by civil society and UN bodies.

2. HR implications

Migration externalization does not stop movement but rather make the journey increasingly dangerous, carrying serious HR risks. These include migrants criminalization, illegal pushbacks and interception at sea, inhumane and arbitrary detention conditions, and return to so-called "safe" third countries without proper safeguards or legal procedures.

Access to justice is largely out of reach for migrants and their families, as it is obstructed by the opacity of agreements, lack of accountability mechanisms, and the political context of partner states. Survivors of abuse, especially women, face stigma, lack of legal aid, and ongoing threats. Families of the missing receive no information or support, prolonging trauma and denying closure.

Externalization measures undermine not only migrant rights but also democracy and civil society in partner countries. EU funding has, in practice, supported and empowered authoritarian regimes, fueling racism, instability, and repression. Local civil society and HR defenders face growing restrictions, while EU support rarely reaches them.

3. Transparency and monitoring

As part of a coalition monitoring EU migration funding, EuroMed Rights has been tracking the HR implications and transparency challenges linked to EU's external migration policies. In 2023, we published *Beyond Borders*, a report documenting HR violations connected to EU-funded actions in Libya and Tunisia and highlighting serious transparency and accountability gaps. In 2024, both the European Court of Auditors (ECA) and the EU Ombudsman, in an inquiry on the EU-funded projects in Libya under NDICI and one EU-Tunisia MoU, echoed these concerns.

HR Impact Assessments (HRIAs): Both the ECA report and the EU Ombudsman found that standalone, structured ex-ante HRIAs are either not conducted or are replaced by risk management exercises lacking transparency and public scrutiny. The ECA revealed that for many EU Trust Fund for Africa (EUTF) projects, ex-ante HR checks were absent or generic, and mitigation measures, where present, were not operationalized at the project level. In Tunisia, the Commission carried out an undisclosed risk management exercise before the MoU was signed, but not a public HRIA, which the Ombudsman flagged as inadequate for ensuring accountability.

HR Monitoring Mechanism: Monitoring of HR impacts during implementation is fragmented and lacks a formal, standardized structure. In Libya, the ECA found that the Commission piloted third-party monitoring, but reports were limited in scope and lacked follow-up. In Tunisia, the Ombudsman found that the Commission relies on implementing partner reports and occasional field missions, but this approach does not amount to a structured or standalone process. Data is dispersed and largely inaccessible to the public and oversight bodies.

Suspension clauses and accountability mechanisms: Neither Libya nor Tunisia features adequate mechanisms for individuals to report alleged HR violations in EU-funded projects. The ECA found no internal procedures for reporting and following up on HR violations, and no clear examples of when suspension clauses had been triggered, despite evidence of violations. The Ombudsman similarly noted the absence of clear criteria for suspending projects in response to HR abuses and the lack of complaint mechanisms for affected individuals.

Both bodies called on the Commission to establish and publish clear procedures and thresholds for suspending funding in cases of HR violations; require standalone, publicly accessible HRIAs before project approval; strengthen monitoring and publish its findings; and create internal procedures and responsibilities for processing HR allegations.

Since the ECA report and Ombudsman inquiries came out, we have met relevant stakeholders to assess progress. We found that while the European Commission is developing internal HR guidelines, these will not be made public. The guidelines are expected to include a list of potential HR risks, mitigation measures, and reporting procedures, but it remains unclear whether they will establish clear thresholds for triggering suspension clauses. Without public access, these tools risk becoming little more than a "tick-the-box" exercise, with limited impact on transparency or accountability.

Concerns were also raised by Members of the European Parliament (MEPs), who noted their limited capacity to trace EU migration spending and effectively exercise oversight. Working Groups set up under the AFET and DEVE committees to monitor NDICI implementation have yet to convene, and awareness of their role appears limited.

Looking ahead to the **next Multiannual Financial Framework (MFF),** the share of the EU budget allocated to migration is expected to rise above the current 10%. There are efforts to exclude displacement/root causes from that share, increasing focus to border control. Proposals to merge development and

humanitarian instruments raised concerns over transparency and traceability among MEPs and civil society alike.

4. Use of technology

The deployment of Artificial Intelligence (AI) and surveillance technology is increasingly embedded in EU migration policies to externalize migration control, particularly in the Southern Neighborhood. These tools threaten the right to asylum, the right to mobility, the principle of non-refoulement, and rights to privacy and liberty.

Today, EU externalisation strategies include **the use of EU funds** – including development aid – **to outsource surveillance technologies,** entrenching political control both on people on the move and local population. Forms of support include training of foreign intelligence and security forces; financing procurement; facilitating exports of surveillance equipment by industry, and promoting legislation which enables surveillance. In the MENA region, journalists and NGOs have reported on how autocratic governments are using surveillance technology tools to further repress HR defenders and suppress freedom of expression and the media. As highlighted by the MENA Surveillance Coalition, the region has become a hub for invasive surveillance, serving state repression and corporate profit. EU-backed projects in the region include intelligence training in Algeria, digital evidence capacity building in Egypt, border tech in Libya, technology allocation in Morocco, and advanced border management in Tunisia. This increasing reliance on surveillance technology can push migrants toward dangerous routes, breach privacy, and curtail freedoms. These happens through a variety of funding instruments, including the aforementioned EUTF and NDICI[1].

At the same time, at the **EU's borders**, surveillance technology has been expanded to detect, deter and repel refugees and migrants. An extensive infrastructure of surveillance systems, databases, biometric identification techniques and information networks has been put in place to provide states with knowledge of – and thus control over – foreign nationals seeking to enter EU. Digital technologies underpin invasions of privacy, brutal violations of HR, and make the border 'mobile', for example through the increased use of mobile biometric identification technologies, such as handheld fingerprint scanners used by police and border authorities.

On the one hand, new technologies are deployed to facilitate the movements of "bona fide" travelers: to enter the EU, tourists and businesspeople are increasingly required to hand over personal information, that is then used to train algorithms to assess the level of risk or threat posed by individuals (and, where that level is deemed too high, to deny them the ability to travel to the EU). On the other hand, new technologies – drones, cameras, social media monitoring, satellite imagery and networks of sensors – are deployed to detect, deter and repel refugees and migrants seeking to enter EU territory through irregular journeys. Those who do manage to enter EU territory are biometrically registered and screened against a large-scale databases. If they are deported, international data-sharing systems are increasingly being used to facilitate that task.

Additionally, an analysis of Spain's southern border reveals costly tech systems that are slow to deploy and mainly used to detect and expel migrants – not to protect or rescue them. The border represents a socio-technical assemblage of power, where technology interacts with legislation, politics and, most importantly, the people on whom it is deployed, e.g. border and security agents playing a key role in the way the

[1] The NDICI merges several EU external financing instruments which existed as separate in the previous budget period (2014-2020), including those of relevance to asylum, migration and forced displacement: the Development and Cooperation Instrument (DCI), the European Neighbourhood Instrument (ENI), the European Instrument for Democracy and Human Rights (EIDHR), and the EU's Instrument contributing to Stability and Peace (IcSP), as well as the European Defence Fund (EDF).

technology is used, maritime rescue teams and civil organizations monitoring the impact on the ground, etc.

Finally, the EU also funds a growing number of research projects that create or experiment with advanced surveillance and predictive tools, including forecasting tools with the objective to "forecast future mobility". These projects include initiatives purportedly designed to help humanitarian organizations and immigration authorities to better plan and allocate their resources in advance but have the potential to contribute to the securitization approach of the European Union.

5. *Key recommendations*

- Promote safe legal pathways for migrants and human rights defenders seeking asylum from the MENA region.
- Reconsider the concept of "safe country of origin," which undermines asylum rights by increasing the burden of proof and allowing expedited procedures. Reconsider the decision to consider "safe" Egypt, Morocco, Tunisia, and Turkey due to well-documented rights violations.
- Reject the removal of mandatory connection criteria for "safe third country" returns, which risks unlawful and unsafe expulsions.
- Oppose informal, opaque MoUs that bypass democratic procedures. All agreements with third countries should follow formal adoption processes and ensure transparency and accountability.
- Embed human rights in all migration agreements, conditioning support on measurable improvements in rights, governance, and civil society space. End cooperation that empowers authoritarian regimes at the expense of human rights.
- Strengthen human rights monitoring in line with ECA and Ombudsman recommendations. For future financial planning, reject merging humanitarian and development funds; maintain the 10% migration cap and reorient funding toward protection and legal pathways.
- Reject the use or outsource of invasive techniques for migration control and surveillance. Rather, make sure they comply with their international and EU legal obligations.