Input for externalisation of migration and impact on the human rights of migrants

This input is based on research findings for a master thesis – due to be published in September – on the EU's external migration strategy being increasingly influenced by Member States' own externalisation policies with third countries. For each externalisation practice, first the policy, its legal basis and transparency are illustrated, followed by an analysis of how the EU is adopting similar externalisation policies. This input seeks to exemplify how externalisation is operationalised and normalised in practice – through political, discoursive and bureaucratic processes – at the national and EU level.

2023 Italy-Albania deal

The policy and its legal basis

The Italy-Albania protocol (6th of November 2023) stipulates the creation of two migrant reception centres in Albania for the identification and processing of asylum claims under Italian jurisdiction. The areas of the centres are given at zero cost from Albania for a duration of 5 years and are equated to Italian border zones with a capacity of 3000 asylum seekers. Individuals transferred in these centres are non-vulnerable migrants and asylum seekers arriving from 'safe third countries', following search and rescue operations in international waters by the Italian coast guard. One centre identifies the conditions of entry for migrants and potential relocation to return centres (CPRs) in Italy within 48 hours of arrival (in Shengjin port), while the one in Gjader processes asylum claims through accelerated border procedures – which can take up a maximum of 56 days. Following this date, individuals with the right to asylum are sent to Italy, while those awaiting repatriation are transferred into CPRs in Italy.

Despite its ratification in both the Italian and Albanian parliament as an informal Memorandum of Understating (MoU) between the two countries, this deal is facing extensive legal hurdles that are limiting its implementation. The Tribunal of Rome initially halted its operationality over Italy's list of 'safe country of origin', which has been sent for review to the Court of Justice of the European Union (CJEU) that is due to submit a ruling. In parallel, the Italian government has appealed the tribunal's judgement and has ratified a new law (37/2025) that amends the scope of the protocol to include transferring migrants awaiting repatriation in Italian CPRs into the Gjader centre in Albania – thus, acting as a 'return hub'. While this initiative is also facing legal blockage by the Tribunal of Rome – who is waiting for the CJEU ruling – the centres have suspended any new operations while maintaining ongoing ones.

Transparency, human rights implications and costs

The protocol is placed under the responsibility of both the Italian Republic and Republic of Albania. For Italy, the Italian Ministry of Interior is responsible for the operative management of the centres and asylum procedures while Italian authorities are responsible for ensuring the stay of migrants within the area. For Albania, the Albanian police force is limited to guaranteeing the external security of the centres. UNHCR has a monitoring role over the policy and practical implementation of the project – with an evaluation report pending – while IOM oversees determining the vulnerability of individuals along with Italian officials. Access to the centres for parliamentary oversight

– at the national and European level – has been reported to be limited and with little collaboration from officials on the ground. MEPs Cecilia Strada and Rachele Scarpa reported that in the Gjader centre – following the transfer of migrants from Italian CPRs – 35 "critical events" have occurred including incidents of self-harm and suicide attempts (two a half incidents per day). They also note extensive isolation measures preventing socialisation between migrants and no preventive measures taken towards suicide attempts – as would be present in CPRs in the mainland. In turn, these findings have been reported to the European Committee on the Prevention of Torture (CPT).

The centres have an estimated cost of 680 million euros across five years yet, opposition parties and NGOs are reporting total costs ranging between 800 million to 1 billion euros. The effective costs of the centres are unknown as they are not publicly available apart from the limited data and estimated provided by the government. Since the opening of the centres, a registered number of 157 individuals have been transferred there.

IT-ALB externalisation strategy – a new EU model

The Italy-Albania protocol is the first policy in the EU to externalise a Member States's (MS) asylum procedure to a non-EU country. This 'extraterritorial processing' sees that asylum procedures to determine individuals' status usually carried out at points of entries at borders, are offshored and processed in third countries (Leclerc et al., 2024). However, since the ratification of the new law amending the Protocol, the centres have become the first 'return hubs' to be approved by an EU MS. This form of externalisation entails the extraterritorial detention of migrants - whose asylum claims have been rejected - in reception areas while awaiting repatriation. The choice of Albania to host the centres reflects a dual interest of both countries to promote their bilateral relations and status. For Italy, this deal not only strengthens their collaboration in migration but also their diplomatic ties for increased investments across all sectors, in view of Albania's accession into the EU (Camera dei Deputati, 2024). For Albania, it seeks EU membership, hoping to conclude accession negotiations by 2027 or 2030 which has been vocally supported by Italy who claims Albania is behaving as if it were already a MS (Italian Government, 2023). Indeed, the protocol has increased Albania's status as a collaborative partner for the EU, garnering the interest of other MS for similar deals and of the EU for new innovative strategies to curb migration.

The Protocol has been characterised both at the national and EU level as an innovative model of migration management which is setting the example for future EU cooperation agreements. While this rhetoric initially served as a discursive tool to justify the Protocol publicly and in internal national political debates, the wide interest at the EU level is turning political will into action. Indeed, in a letter to European Commission President Ursula von der Leyen, fifteen MS supported the Protocol as a building block upon which to develop the EU's external migration strategy. In turn, von der Leyen has extensively supported the policy publicly and in informal letters to MS as necessary 'out of the box' tool that is innovative in migration management – highlighting how MS bilateral efforts form part and complement a 'Team Europe' approach to the external dimension of migration. Practically, lower ministerial levels of the EU's Justice and Home Affairs

(JHA) Council and the DG Home are exploring return hubs and asylum offshoring as viable policies that could be pursued bilaterally by MS or by the EU. These discussions are conducted in informal deliberative settings at lower ministerial levels due to the high salience of the policies – for instance through working and technical groups that specialise in developing the EU's external migration policies and externalisation efforts (such as MOCADEM, SCIFA and EMWP). Document access to these groups is confidential and when requested, documentation is often redacted or does not include the content of negotiations – only detailing preparatory documents or annexes. Additionally, the European Commission has put forth two new proposals to review the definition of 'safe third country' and standardising new return procedures across all MS within the New Pact on Migration and Asylum. The new legal definition of 'safe third country' introduces the concept of effective protection which entails that transiting through an 'unsafe' country is sufficient grounds for inadmissibility of asylum. When neither transit nor personal links exists, MS can alternatively rely on bilateral agreements to ensure applicant's protection elsewhere Conversely, the returns proposal would create a legal framework through which MS can negotiate bilateral agreements with non-EU states for returns or establishment of return hubs. If approved, these amendments would help resolve some of the legal hurdles faced by the Italy-Albania deal and could promote a new form of externalisation for future migration governance.

2023 Spain-Morocco Memorandum of Understanding

The policy and its legal basis

The Spain – Morocco Memorandum of Understanding (MoU) on migration governance was signed on the 2nd of February 2023 along with twenty other comprehensive informal agreements, during the first high-level meeting between the two countries in eight years (Diario de Sesiones 476, 2023). While the official policy text of the MoU is not publicly available, press releases from the ministers and parliamentarian debates have detailed its contents. The agreement stipulates an increased collaboration in migration management in border control (Ministerio de Asuntos Exteriores, Unión Europea y Cooperación, 2024) and the fight against migration smuggling (La Moncloa, 2023a). Along with increased operational cooperation and information exchange, through joint maritime, land and air patrols (La Moncloa, 2023b). Specifically, the MoU intensifies coordinated police operations to fight illegal migration and human trafficking. This externalisation policy focuses on border control mechanisms developed, coordinated and implemented jointly with Morocco. In addition to the maritime border between the two countries, Spain also holds a land border with Morocco through the enclaves of Ceuta and Melilla. In 2021, these enclaves became a pressure point for the increase of migration flows into Spain and have since become significant areas of border control and contestation with Morocco (Martin, 2021). However, following Spain's repositioning and acceptance of Morocco's sovereignty over the Western Sahara, bilateral relations have resumed across all policy areas (La Moncloa, 2022a).

Transparency, human rights implications and costs

Like all Spanish MoUs, the official policy texts are not publicly available unless obtained through informal channels. This makes it difficult to extrapolate the extent of the collaboration, the full scope of the costs and the impact of the implemented policies – along with limiting oversight. Nevertheless, prior collaborations and working arrangements in joint border control – with Morocco or Frontex – have highlighted vulnerabilities in border management such as in the 2021 crisis of Ceuta and Melilla. Thus, human rights assessments should be conducted to ensure safe, orderly and transparent border control practices that are operationalised by the MoU. Excluding EU investments worth 152 million euros to strengthen Morocco border management from 2022, the costs of the MoU's or Spain's investments in joint border control in the region are not disclosed.

New framework for externalisation – 'whole of route' deals

Overall, this MoU represents a formula for externalisation which mainstreams border control with other comprehensive agreements on investments on trade, the economy, energy and development. Nationally, Spanish officials represented this agreement as preventive model of migration that is humane and strengthens security. Under the Spanish Presidency of the European Council of 2023, Spain approved and promoted similar comprehensive deals to its MoU and that were consistent with previous EU externalisation initiatives (such as the EU's Action Plans to increase MS collaboration with third countries under a 'Team Europe' approach). These policies promote a preventive model of migration that limits departures through operation cooperation with countries of transit and origin. Which is reinforced through sustained material assistance, financial support, and capacity building (European Parliament, 2023).

Additionally, Spain and the EU advocated for a 'whole of route approach' that couples migration with development assistance, border strengthening and the development of legal pathways. Practically, this was supported across EU institutional levels – particularly at the lower technical group of MOCADEM (Operational Coordination Mechanism on the External Dimension of Migration) which enables timely operational coordination in EU external policies. And in turn implemented through the approval of the EU-Tunisia deal – which was championed under the Spanish Presidency and that holds a similar externalisation strategy to the MoU – and subsequent deals (EU-Mauritania, EU-Egypt MoUs). These informal deals have become standard practice in the EU's external migration strategy as the EU is attempting to develop upstream partnerships that build upon previous MS's bilateral efforts with third countries (Politico, 2024b). Currently, the EU is negotiating a similar deal with Morocco (Financial Times, 2024).